

DISTRICT OF COLUMBIA
OFFICIAL CODE

2001 EDITION

Volume 15

Title 28

Commercial Instruments and Transactions
Subtitle II

to

Title 31

Insurance and Securities
Chapters 1 to 9

JUNE 2013 SUPPLEMENT



LexisNexis®

COPYRIGHT © 2013
By
The District of Columbia
All Rights Reserved.

5442810

ISBN 978-0-7698-6589-8 (Volume 15)

ISBN 978-0-7698-6495-2 (Set)

Matthew Bender & Company, Inc.
701 East Water Street, Charlottesville, VA 22902
www.lexisnexus.com
Customer Service: 1-800-833-9844

LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

COUNCIL OF THE DISTRICT OF COLUMBIA

Phil Mendelson, *Chairman*

Yvette M. Alexander
Marion Barry
Anita Bonds
Muriel Bowser
David A. Catania
Mary M. Cheh

Jack Evans
Jim Graham
David Grosso
Kenyan R. McDuffie
Vincent B. Orange, Sr.
Tommy Wells

OFFICE OF THE GENERAL COUNSEL

Under Whose Direction This
Volume Has Been Prepared

V. David Zvenyach, *General Counsel*

John Hoellen, *Legislative Counsel*

Benjamin F. Bryant, Jr., *Codification Counsel*

Karen R. Barbour, *Legal Assistant*

*



Digitized by the Internet Archive
in 2014

PREFACE

These annual cumulative pocket parts update the District of Columbia Official Code, 2001 Edition, with permanent, temporary, and emergency legislation and judicial constructions contained in annotations. These pocket parts contain the Laws, general and permanent in their nature, relating to or in force in the District of Columbia (except such laws as are of application in the General and Permanent Laws of the United States) in effect as of April 1, 2013.

This Supplement also updates the D.C. Code annotations by including notes taken from District of Columbia cases appearing in the following sources: Atlantic Reporter, 3d Series Supreme Court Reporter Federal Reporter, 3d Series Federal Supplement, 2d Series Bankruptcy Reporter.

Current legislation between pamphlets or pocket parts can be accessed online at www.lexisnexis.com/advance, www.lexisnexis.com/research, and <http://dcclims1.dccouncil.us/lims>.

The unannotated District of Columbia Official Code can be accessed on the District of Columbia Council Website at <http://www.dccouncil.us>.

Later laws and annotations will be cumulated in subsequent annual Pocket Parts.

Visit our website at <http://www.lexisnexis.com> for an online bookstore, technical support, customer service, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, email us at customer.support@lexisnexis.com, or write to: D.C. Editor, LexisNexis, 701 East Water Street, Charlottesville, VA 22902-5389.

June, 2013

LEXISNEXIS

DIVISION V. LOCAL BUSINESS AFFAIRS.

TITLE 28. COMMERCIAL INSTRUMENTS AND TRANSACTIONS.

SUBTITLE II. OTHER COMMERCIAL TRANSACTIONS

Chapter

38. Consumer Protections

40A. Assistive Technology Device Warranty

SUBTITLE II. OTHER COMMERCIAL TRANSACTIONS.

CHAPTER 38. CONSUMER PROTECTIONS.

Subchapter I. General

Sec.

28-3814. Debt collection.

Subchapter I. General.

§ 28-3814. Debt collection.

(a) This section only applies to conduct and practices in connection with collection of obligations arising from consumer credit sales, consumer leases, and direct installment loans (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of Title 28).

(b) As used in this section, the term —

(1) “claim” means any obligation or alleged obligation, arising from a consumer credit sale, consumer lease, or direct installment loan;

(1A) “creditor” means a claimant or other person holding a claim;

(2) “debt collection” means any action, conduct or practice in connection with the solicitation of claims for collection or in connection with the collection of claims, that are owed or due, or are alleged to be owed or due, a seller or lender by a consumer; and

(3) “debt collector” means any person engaging directly or indirectly in debt collection, and includes any person who sells or offers to sell forms represented to be a collection system, device, or scheme intended or calculated to be used to collect claims.

(c) No creditor or debt collector shall collect or attempt to collect any money alleged to be due and owing by means of any threat, coercion, or attempt to coerce in any of the following ways:

(1) the use, or express or implicit threat of use, of violence or other criminal means, to cause harm to the person, reputation, or property of any person;

(2) the accusation or threat to falsely accuse any person of fraud or any crime, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or contempt of society;

(3) false accusations made to another person, including any credit reporting agency, that a consumer has not paid a just debt, or threat to so make such false accusations;

(4) the threat to sell or assign to another the obligation of the consumer with an attending representation or implication that the result of such sale or assignment would be that the consumer would lose any defense to the claim or would be subjected to harsh, vindictive, or abusive collection attempts; and

(5) the threat that nonpayment of an alleged claim will result in the arrest of any person.

(d) No creditor or debt collector shall unreasonably oppress, harass, or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another in any of the following ways:

(1) the use of profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(2) the placement of telephone calls without disclosure of the caller's identity or with the intent to harass or threaten any person at the called number; and

(3) causing expense to any person in the form of long-distance telephone tolls, telegram fees, or other charges incurred by a medium of communication, by concealment of the true purpose of the notice, letter, message, or communication.

(e) No creditor or debt collector shall unreasonably publicize information relating to any alleged indebtedness or debtor in any of the following ways:

(1) the communication of any false information relating to a consumer's indebtedness to any employer or his agent except where such indebtedness had been guaranteed by the employer or the employer has requested the loan giving rise to the indebtedness and except where such communication is in connection with an attachment or execution after judgments as authorized by law;

(2) the disclosure, publication, or communication of false information relating to a consumer's indebtedness to any relative or family member of the consumer unless such person is known to the creditor or debt collector to be a member of the same household as the consumer, except through proper legal action or process or at the express and unsolicited request of the relative or family member;

(3) the disclosure, publication, or communications of any information relating to a consumer's indebtedness by publishing or posting any list of consumers, except for the publication and distribution of "stop lists" to point-of-sale locations where credit is extended, or by advertising for sale any claim to enforce payment thereof or in any other manner other than through proper legal action, process, or proceeding; and

(4) the use of any form of communication to the consumer, which ordinarily may be seen by any other persons, that displays or conveys any information about the alleged claim other than the name, address, and phone number of the creditor or debt collector.

(f) No creditor or debt collector shall use any fraudulent, deceptive, or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers in any of the following ways:

(1) the use of any company name, while engaged in debt collection, other than the creditor or debt collector's true company name;

(2) the failure to clearly disclose in all written communications made to collect or attempt to collect a claim or to obtain or attempt to obtain information about a consumer, that the creditor or debt collector is attempting to collect a claim and that any information obtained will be used for that purpose;

(3) any false representation that the creditor or debt collector has in his possession information or something of value for the consumer, that is made to solicit or discover information about the consumer;

(4) the failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection, or to whom the claim is owed, at the time of making any demand for money;

(5) any false representation or implication of the character, extent, or amount of a claim against a consumer, or of its status in any legal proceeding;

(6) any false representation or false implication that any creditor or debt collector is vouched for, bonded by, affiliated with or an instrumentality, agent, or official of the District of Columbia or any agency of the Federal or District government;

(7) the use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval;

(8) any representation that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation; and

(9) any false representation or false impression about the status or true nature of or the services rendered by the creditor or debt collector or his business.

(g) No creditor or debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim in any of the following ways:

(1) the seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessities of life where the original obligation was not in fact incurred for such necessities;

(2) the seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt without clearly disclosing the nature and conse-

quences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;

(3) the collection or the attempt to collect from the consumer all or any part of the creditor or debt collector's fee or charge for services rendered;

(4) the collection of or the attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless such interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation and legally chargeable to the consumer or unless such interest or incidental fee, charge, or expense is expressly authorized by law; and

(5) any communication with a consumer whenever it appears that the consumer has notified the creditor that he is represented by an attorney and the attorney's name and address are known.

(h) No creditor or debt collector shall use, or distribute, sell, or prepare for use, any written communication that violates or fails to conform to United States postal laws and regulations.

(i) No creditor or debt collector shall take or accept for assignment any of the following:

(1) an assignment of any claim for attorney's fees which have not been lawfully provided for in the writing evidencing the obligation; or

(2) an assignment for collection of any claim upon which suit has been filed or judgment obtained, without the creditor or debt collector first making a reasonable effort to contact the attorney representing the consumer.

(j)(1) Proof, by substantial evidence, that a creditor or debt collector has wilfully violated any provision of the foregoing subsections of this section shall subject such creditor or debt collector to liability to any person affected by such violation for all damages proximately caused by the violation.

(2) Punitive damages may be awarded to any person affected by a wilful violation of the foregoing subsections of this section, when and in such amount as is deemed appropriate by the court and trier of fact.

(k) No creditor, debt collector, or collection agency, or their representatives or agents shall contact consumers by telephone before 8 a.m. and after 9 p.m. EST or EDT, whichever time zone is in effect.

(Dec. 17, 1971, 85 Stat. 675, Pub. L. 92-200, § 4; Dec. 2, 2011, D.C. Law 19-59, § 2, 58 DCR 8973; Sept. 26, 2012, D.C. Law 19-171, § 82, 59 DCR 6190.)

Section references. — This section is referenced in § 28-3909.

Effect of amendments.

The 2012 amendment by D.C. Law 19-171 validated a previously made technical correction in (b)(1A).

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of

2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

CHAPTER 39. CONSUMER PROTECTION PROCEDURES.

§ 28-3904. Unlawful trade practices.

Section references. — This section is referenced in § 16-4431, § 28-3905, § 28-3909, § 28-4006, and § 38-1312.

CASE NOTES

Preemption.

Mortgagor's claim that mortgagee, note holder, bank holding company, and others violated the District of Columbia Consumer Protection Procedures Act (CPPA) by making misrepresentations in her loan documents was preempted by the Home Owners' Loan Act (HOLA) and regulation preempting state laws purporting to regulate credit activities of fed-

eral savings associations, where the claim, specifically linked to the loan documents, had a substantial effect on disclosures defendants were allowed to make under HOLA, as well as origination of their loans, loan-related fees, and terms of credit, amortization of loans, and deferral and capitalization of interest. *Poindexter v. Wachovia Mortg. Corp.*, 851 F.Supp.2d 121, 2012 U.S. Dist. LEXIS 45144 (2012).

§ 28-3905. Complaint procedures.

Section references. — This section is referenced in § 28-3818, § 28-3901, § 28-3902, § 28-3903, § 28-3906, and § 28-4002.

CASE NOTES

ANALYSIS

Consumer transactions.
Judicial proceedings.

Consumer transactions.

Psychologists' association and its lobbying arm were exempt from psychologists' consumer protection action, under District of Columbia's Consumer Protection Procedures Act (CPPA), arising out of association's alleged misrepresentations that special assessment paid by psychologists to association for use by lobbying arm was required for membership in association, as psychologists' claims were based on membership in association and membership

services. In *re APA Assessment Fee Litigation*, 2012 WL 1940224 (2012).

Judicial proceedings.

Under District of Columbia choice-of-law principles, District of Columbia law, rather than California law, applied to psychologists' consumer protection claims against psychologists' association and its lobbying arm, based on allegations that association misrepresented that special assessment paid by psychologists to association for use by lobbying arm was required for membership in association, as both jurisdictions had interest in applying their own laws to facts of case, and District of Columbia was forum jurisdiction. In *re APA Assessment Fee Litigation*, 2012 WL 1940224 (2012).

CHAPTER 40A. ASSISTIVE TECHNOLOGY DEVICE WARRANTY.

Sec.

28-4031. Definitions.

28-4032. Implied warranty; responsibility for repair; return or replacement; certain actions deemed void.

Sec.

28-4033. Returned devices; subsequent sale or lease; disclosure.

28-4034. Legal action.

§ 28-4031. Definitions.

For the purposes of this chapter, the term:

(1) “Assistive device dealer” means an individual or entity that is in the business of selling assistive technology devices, including a manufacturer who sells assistive technology devices directly to consumers.

(2) “Assistive device lessor” means an individual or entity that leases an assistive technology device to a consumer, or who holds the lessor’s rights, under a written lease.

(3)(A) “Assistive technology device” means:

(i) An item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used or designed to be used to increase, maintain, or improve a functional capability of an individual with a disability; and

(ii) Each component of the assistive technology device system that is itself ordinarily an assistive technology device.

(B) The term “assistive technology device” includes:

(i) Wheelchairs and scooters of any kind, and other aids that enhance the mobility or positioning of an individual, such as motorization, motorized positioning features, and the switches and controls for motorized features;

(ii) Hearing aids, telephone communication devices for the deaf, and other assistive listening devices;

(iii) Computer equipment and reading devices with voice output, optical scanners, talking software, Braille printers, and other aids and devices that provide access to text;

(iv) Computer equipment with voice output, artificial larynges, voice amplification devices, and other alternative and augmentative communication devices;

(v) Voice recognition computer equipment, software and hardware accommodations, switches, and other forms of alternative access to computers;

(vi) Environmental control units; and

(vii) Simple mechanical aids that enhance the functional capabilities of an individual with disabilities.

(4) “Authorized dealer” means any seller of an assistive technology device that:

(A) Has, within a specified geographic area, an exclusive distribution arrangement with any person or entity that manufactures or assembles an assistive technology device; or

(B) Is designated by the individual or entity that manufactures or assembles the assistive technology device to repair or accept for repair the assistive technology device.

(5) “Collateral costs” means the following expenses incurred by a consumer:

(A) Medical expenses for the treatment of a physical injury caused by a nonconformity in an assistive technology device;

(B) The cost to rent a substitute assistive technology device during the time repairs are attempted for an assistive technology device or mobility aid

that has a nonconformity and during the time preceding receipt of a replacement when repairs have been unsuccessful;

(C) The cost of shipping an assistive technology device that has a nonconformity to a manufacturer, lessor, or authorized dealer for repair or replacement; and

(D) The documented costs of long-distance telephone calls and facsimile transmissions used to contact the manufacturer, lessor, or authorized dealer for the purpose of effecting a repair or replacement of an assistive technology device that has a nonconformity.

(6) “Consumer” means:

(A) The purchaser of an assistive technology device, if the device was purchased from an authorized dealer or manufacturer for purposes other than resale;

(B) A person to whom the device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the device;

(C) A person who may enforce the warranty; or

(D) A person who leases a device from an assistive device lessor under a written lease.

(7) “Manufacturer” means an individual or entity that manufactures or assembles devices, and agents of that person or company, including an authorized dealer, an importer, distributor, factory branch, distributor branch, and any warrantors of the manufacturer’s device. The term “manufacturer” shall not include a professional who fabricates, without charge, a device for use in the course of treatment.

(8) “Nonconformity” means a condition or defect that significantly impairs the use, value, function, or safety of a device or any of its components, but shall not include a condition or defect of the device that is the result of:

(A) Abuse, misuse, or neglect by a consumer;

(B) Modifications or alterations not authorized by the manufacturer; or

(C) Failure to follow any manufacturer’s written service and maintenance guidelines furnished at the time of purchase.

(9)(A) “Reasonable attempt to repair” means that:

(i) Within one year after the date of the 1st delivery of the device:

(I) The same nonconformity has been subject to repair 3 or more times by the manufacturer, assistive device lessor, or any assistive device dealer authorized by the manufacturer to repair the assistive technology device, and the nonconformity continues to exist and interfere with the assistive technology device’s operation; or

(ii) The assistive technology device is out of service, with no fungible loaner available, for a cumulative total of at least 30 days, exclusive of any necessary time in shipment, due to repair by the manufacturer, assistive device lessor, or any assistive device dealer authorized by the manufacturer to repair the assistive technology device, all of which is due to warranty nonconformities.

(B) The term “reasonable attempt to repair” shall not include repairs:

(i) Unable to be performed because of conditions beyond the control of

the manufacturer, or its agents or authorized dealers, such as invasion, strike, fire, and natural disasters.

(ii) Related to the routine fittings and adjustments to hearing aids.

(Oct. 26, 2010, D.C. Law 18-241, § 2, 57 DCR 7550; Sept. 26, 2012, D.C. Law 19-171, § 83(c), 59 DCR 6190.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 made a technical correction to D.C. Law 18-241 which did not affect this section as codified; and substituted “this chapter” for “this act” wherever it appears.

Legislative history of Law 19-171. — Law 19-171, the “Technical Amendments Act of

2012,” was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

§ 28-4032. Implied warranty; responsibility for repair; return or replacement; certain actions deemed void.

(a) Notwithstanding any other provision of law or express warranty furnished by the manufacturer, the manufacturer shall be deemed to have warranted that for a period of one year from date of 1st delivery to the consumer the assistive technology device, when used as intended, will be free from any nonconformity. Any nonconformity shall be repaired, including parts and labor, by the manufacturer or its agent without cost to the consumer.

(b) If, after a reasonable attempt to repair, the nonconformity is not repaired, the assistive device dealer, assistive device lessor, or manufacturer shall, within 30 days after a consumer’s request:

(1) Refund to the consumer all collateral costs; and

(2)(A) Accept return of the nonconforming assistive technology device and replace the nonconforming assistive technology device with one of comparable value, function, and usefulness; or

(B) Refund the full purchase price to the consumer.

(c) A manufacturer or dealer exclusion or limitation of the implied warranties or consumer remedies prescribed by this section shall be void.

(d) A purported waiver of rights to legal action by a consumer within an assistive technology device purchase agreement or assistive technology device lease agreement shall be void.

(Oct. 26, 2010, D.C. Law 18-241, § 3, 57 DCR 7550; Sept. 26, 2012, D.C. Law 19-171, § 83(d), 59 DCR 6190.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 made a technical correction to D.C. Law 18-241 which did not affect this section as codified.

Legislative history of Law 19-171. — See note to § 28-4031.

§ 28-4033. Returned devices; subsequent sale or lease; disclosure.

An assistive technology device returned due to nonconformity under the

provisions of this chapter shall not be sold or leased unless full disclosure in writing of the reason for the return is made to any prospective consumer.

(Oct. 26, 2010, D.C. Law 18-241, § 4, 57 DCR 7550; Sept. 26, 2012, D.C. Law 19-171, §§ 83(c), 83(e), 59 DCR 6190.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 made a technical correction to D.C. Law 18-241 which did not affect this section as codified; and substituted “this chapter” for “this act.”

Legislative history of Law 19-171. — See note to § 28-4031.

§ 28-4034. Legal action.

(a) In addition to any other remedies otherwise available to a consumer, a consumer who suffers loss as a result of any violation of this chapter may bring an action to recover damages. The court shall award a consumer who prevails in an action twice the amount of any pecuniary loss, costs, reasonable attorneys’ fees, and any equitable relief that the court determines is appropriate.

(b) The remedies under this chapter shall be cumulative and not exclusive and shall be in addition to any other legal or equitable remedies otherwise available to the consumer.

(Oct. 26, 2010, D.C. Law 18-241, § 5, 57 DCR 7550; Sept. 26, 2012, D.C. Law 19-171, §§ 83(c), 83(f), 59 DCR 6190.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 made a technical correction to D.C. Law 18-241 which did not affect this section as codified; and substituted “this chapter” for “this act” wherever it appears.

Legislative history of Law 19-171. — Law 19-171, the “Technical Amendments Act of

2012,” was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on Sept. 26, 2012.

TITLE 29. BUSINESS ORGANIZATIONS.

Chapter

1. General Provisions.
2. Entity Transactions.
3. Business Corporations.
4. Nonprofit Corporations.
5. Professional Corporations.
6. General Partnerships.
7. Limited Partnerships.
8. Limited Liability Companies.
9. General Cooperative Associations.
10. Limited Cooperative Associations.
11. Unincorporated Nonprofit Associations.
12. Statutory Trusts.

CHAPTER 1. GENERAL PROVISIONS.

Subchapter I. General Provisions

- Sec.
- 29-101.02. Definitions.
- 29-101.06. Civil fines for violations of title.

Subchapter II. Filing

- 29-102.01. Entity filing requirements.
- 29-102.03. Effective time and date.
- 29-102.04. Withdrawal of filed record before effectiveness.
- 29-102.05. Correcting filed record.
- 29-102.06. Duty of Mayor to file; review of refusal to file.
- 29-102.08. Certificate of good standing or registration.
- 29-102.09. Signing of entity filing.
- 29-102.10. Delivery by Mayor.
- 29-102.11. Biennial report for Mayor.

Subchapter III. Name of Entity

- 29-103.01. Permitted names.
- 29-103.02. Name requirements for certain types of entities.
- 29-103.04. Registration of name.

Subchapter IV. Registered Agent

- 29-104.01. Definitions.
- 29-104.02. Entities required to designate and maintain registered agent.
- 29-104.04. Designation of registered agent.
- 29-104.05. Listing of commercial registered agent.
- 29-104.06. Termination of listing of commercial registered agent.

Sec.

- 29-104.07. Change of registered agent by entity.
- 29-104.08. Change of name, address, type of entity, or jurisdiction of formation by noncommercial registered agent.
- 29-104.09. Change of name, address, type of entity, or jurisdiction of formation by commercial registered agent.
- 29-104.10. Resignation of registered agent.
- 29-104.11. Designation of registered agent by nonregistered foreign entity or nonfiling domestic entity.
- 29-104.12. Service of process, notice, or demand on entity.
- 29-104.13. Duties of registered agent.
- 29-104.14. Personal jurisdiction.

Subchapter V. Foreign Entities

- 29-105.02. Registration to do business in the District.
- 29-105.03. Foreign registration statement.
- 29-105.04. Amendment of foreign registration statement.
- 29-105.05. Activities not constituting doing business.
- 29-105.06. Noncomplying name of foreign entity.
- 29-105.07. Withdrawal of registration of registered foreign entity.
- 29-105.08. Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.
- 29-105.09. Withdrawal on dissolution or conversion to nonfiling entity other than limited liability partnership.

Sec.
29-105.10. Transfer of registration.
29-105.11. Termination of registration.

Sec.
29-106.03. Reinstatement.

Subchapter VI. Administrative Dissolution

Subchapter VII. Miscellaneous Provisions

29-106.01. Grounds.
29-106.02. Procedure and effect.

29-107.01. Reservation of power to amend or repeal.

Subchapter I. General Provisions.

§ 29-101.02. Definitions.

Except as otherwise provided in definitions of the same terms in other chapters of this title, for the purposes of this title, the term:

(1) “Biennial report” means the report required by § 29-102.11.

(2) “Business corporation” means:

(A) A domestic business corporation incorporated under or subject to Chapter 3 of this title; or

(B) A foreign business corporation.

(3) “Business trust” means a trust formed under the statutory law of another state which is not a foreign statutory trust and does not have a predominately donative purpose.

(4) “Commercial registered agent” means a person listed under § 29-104.05.

(5) “Common-law business trust” means a common-law trust that does not have a predominately donative purpose.

(6) “Debtor in bankruptcy” means a person that is the subject of:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(B) A comparable order under federal, state, or foreign law governing insolvency.

(7) “Distributional interest” means the right under an unincorporated entity’s organic law and organic rules to receive distributions from the entity.

(8) “Domestic”[,], with respect to an entity, means governed as to its internal affairs by the law of the District or created under the provisions of a special act of congress unless otherwise noted under its Congressional Charter.

(9) “Effective date”, when referring to a record filed by the Mayor, means the time and date determined in accordance with § 29-102.03.

(10)(A) “Entity” means:

(i) A business corporation;

(ii) A nonprofit corporation;

(iii) A general partnership, including a limited liability partnership;

(iv) A limited partnership, including a limited liability limited partnership;

(v) A limited liability company;

(vi) A general cooperative association;

(vii) A limited cooperative association;

(viii) An unincorporated nonprofit association;

(ix) A statutory trust, business trust, or common-law business trust;

or

(x) Any other person that has a legal existence separate from any interest holder of that person or that has the power to acquire an interest in real property in its own name.

(B) The term “entity” does not include:

(i) An individual;

(ii) A testamentary or inter vivos trust with a predominantly donative purpose, or a charitable trust;

(iii) An association or relationship that is not a partnership under the rules set forth in § 29-602.02(c) or a similar provision of the law of another jurisdiction;

(iv) A decedent’s estate; or

(v) A government or a governmental subdivision, agency, or instrumentality.

(11) “Entity filing” means a record delivered for filing to the Mayor pursuant to this title.

(12) “Filed record” means a record filed by the Mayor pursuant to this title.

(13) “Filing entity” means an entity that is formed by filing a public organic record. The term does not include a limited liability partnership.

(14) “Foreign”, with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than the District.

(15) “General cooperative association” means a domestic general cooperative association formed under or subject to Chapter 9 of this title or a foreign general cooperative association.

(16) “General partnership” means a domestic general partnership formed under or subject to Chapter 6 of this title or a foreign general partnership. The term “general partnership” includes a limited liability partnership.

(17) “Governance interest” means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(A) Receive or demand access to information concerning, or the books and records of, the entity;

(B) Vote for the election of the governors of the entity; or

(C) Receive notice of or vote on issues involving the internal affairs of the entity.

(18) “Governor” means a:

(A) Director of a business corporation;

(B) Director or trustee of a nonprofit corporation;

(C) General partner of a general partnership;

(D) General partner of a limited partnership;

(E) Manager of a manager-managed limited liability company;

(F) Member of a member-managed limited liability company;

(G) Director of a general cooperative association;

(H) Director of a limited cooperative association;

(I) Manager of an unincorporated nonprofit association;

(J) Trustee of a statutory trust, business trust, or common-law business trust; or

(K) Any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the entity's organic law and organic rules.

(19) "Interest" means a:

- (A) Share in a business corporation;
- (B) Membership in a nonprofit corporation;
- (C) Partnership interest in a general partnership;
- (D) Partnership interest in a limited partnership;
- (E) Membership interest in a limited liability company;
- (F) Share in a general cooperative association;
- (G) Member's interest in a limited cooperative association;
- (H) Membership in an unincorporated nonprofit association;
- (I) Beneficial interest in a statutory trust, business trust, or common

law business trust; or

(J) Governance interest or distributional interest in any other type of unincorporated entity.

(20) "Interest holder" means:

- (A) A shareholder of a business corporation;
- (B) A member of a nonprofit corporation;
- (C) A general partner of a general partnership;
- (D) A general partner of a limited partnership;
- (E) A limited partner of a limited partnership;
- (F) A member of a limited liability company;
- (G) A shareholder of a general cooperative association;
- (H) A member of a limited cooperative association;
- (I) A member of an unincorporated nonprofit association;
- (J) A beneficiary or beneficial owner of a statutory trust, business trust,

or common law business trust; or

(K) Any other direct holder of an interest.

(21) "Jurisdiction", used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(22) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.

(23) "Limited cooperative association" means a domestic limited cooperative association formed under or subject to Chapter 10 of this title or a foreign limited cooperative association.

(24) "Limited liability company" means a domestic limited liability company formed under or subject to Chapter 8 of this title or a foreign limited liability company.

(25) "Limited liability limited partnership" means a domestic limited liability limited partnership formed under or subject to Chapter 7 of this title or a foreign limited liability limited partnership.

(26) "Limited liability partnership" means a domestic limited liability partnership that has a statement of qualification in effect under Chapter 6 of this title or a foreign limited liability partnership.

(27) "Limited partnership" means a domestic limited partnership formed under or subject to Chapter 7 of this title or a foreign limited partnership. The term includes a limited liability limited partnership.

(28) “Noncommercial registered agent” means a person that is not a commercial registered agent and is:

(A) An individual or domestic or foreign entity that serves in the District as the registered agent of an entity;

(B) An individual who holds the office or other position in an entity who is designated as the registered agent pursuant to § 29-104.04(a)(2)(B); or

(C) A member in good standing of the District of Columbia Bar who maintains an office in the District of Columbia.

(29) “Nonfiling entity” means an entity that is formed other than by filing a public organic record.

(30) “Nonprofit corporation” means a domestic nonprofit corporation incorporated under or subject to Chapter 4 of this title or a foreign nonprofit corporation.

(31) “Nonregistered foreign entity” means a foreign entity that is not registered to do business in the District pursuant to a statement of registration filed by the Mayor.

(32) “Organic law” means the law of an entity’s jurisdiction of formation which governs the internal affairs of the entity.

(33) “Organic rules” means the public organic record and private organic rules of an entity.

(34) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal entity.

(35) “Principal office” means the principal executive office of an entity, whether or not the office is located in the District.

(36) “Private organic rules” means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic record, if any. The term “private organic rules” shall include:

(A) Bylaws of a business corporation;

(B) Bylaws of a nonprofit corporation;

(C) Partnership agreement of a general partnership;

(D) Partnership agreement of a limited partnership;

(E) Operating agreement of a limited liability company;

(F) Bylaws of a general cooperative association;

(G) Bylaws of a limited cooperative association;

(H) Governing principles of an unincorporated nonprofit association;

and

(I) Trust instrument of a statutory trust or similar rules of a business trust, or common-law business trust.

(37) “Proceeding” includes a civil action, arbitration, mediation, administrative proceeding, criminal prosecution, and investigatory action.

(38) “Professional limited liability company” means a limited liability company organized under Chapter 8 of this title solely for the purpose of rendering professional services through its members, managers, employees, or agents.

(39) “Property” means all property, whether real, personal, or mixed, or tangible or intangible, or any right or interest therein.

(40) “Public organic record” means a record the filing of which by the Mayor is required to form an entity and any amendment to or restatement of that record. The term “public organic record” shall include the:

- (A) Articles of incorporation of a business corporation;
- (B) Articles of incorporation of a nonprofit corporation;
- (C) Certificate of limited partnership of a limited partnership;
- (D) Certificate of organization of a limited liability company;
- (E) Articles of incorporation of a general cooperative association;
- (F) Articles of organization of a limited cooperative association; and
- (G) Certificate of trust of a statutory trust or a similar record of a business trust or common-law business trust.

(41) “Receipt” or “receive”, as used in this chapter, means actual receipt.

(42) “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(43) “Registered agent” means an agent of an entity which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity. The term “registered agent” includes a commercial registered agent and a noncommercial registered agent.

(44) “Registered foreign entity” means a foreign entity that is registered to do business in the District pursuant to a statement of registration filed by the Mayor.

(45) “Sign” means, with present intent to authenticate or adopt a record to:

- (A) Execute or adopt a tangible symbol; or
- (B) Attach to or logically associate with the record an electronic symbol, sound, or process.

(46) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(47) “Statutory trust” means a domestic statutory trust formed under or subject to Chapter 12 of this title or a trust formed under a statute of a jurisdiction other than the District which would be a statutory trust if formed under the law of the District.

(48) “Superior Court” means the Superior Court of the District of Columbia.

(49) “Transfer” includes an assignment, conveyance, sale, lease, or encumbrance, including a mortgage or security interest, a gift, or a transfer by operation of law.

(50) “Type of entity” means a generic form of entity:

- (A) Recognized at common law; or
- (B) Formed under an organic law, whether or not some entities formed under that organic law are subject to provisions of that law that create different categories of the form of entity.

(51) “Unincorporated nonprofit association” means a domestic unincorporated nonprofit association formed under or subject to Chapter 11 of this title or a nonprofit association formed under the law of a jurisdiction other than the

District which would be an unincorporated nonprofit association if formed under the law of the District.

(52) “Written” means inscribed on a tangible medium. “Writing” has a corresponding meaning.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(2), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — Law 19-210, the “District of Columbia Official Code Title 29 Technical and Harmonizing Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-532. The Bill was adopted on first and second readings on July

10, 2012, and Oct. 2, 2012, respectively. Signed by the Mayor on Oct. 31, 2012, it was assigned Act No. 19-512 and transmitted to Congress for its review. D.C. Law 19-210 became effective on Mar. 5, 2013.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-101.06. Civil fines for violations of title.

(a) The Mayor, pursuant to rules adopted in accordance with subchapter I of Chapter 5 of Title 2, may impose civil fines and penalties pursuant to Chapter 18 of Title 2, on any person who:

(1) Signs any filing pursuant to this title knowing it to contain a material misstatement of fact;

(2) Does business in the District of Columbia and:

(A) If a domestic business corporation or professional corporation, does not have articles of incorporation filed under § 29-302.02;

(B) If a domestic nonprofit corporation, does not have articles of incorporation filed under § 29-402.02;

(C) If a domestic limited partnership, does not have a certificate of limited partnership filed under § 29-702.01;

(D) If a domestic limited liability company, does not have a certificate of organization filed under § 29-802.01;

(E) If a domestic general cooperative association, does not have articles of incorporation filed under § 29-906;

(F) If a domestic limited cooperative association, does not have articles of organization filed under § 29-1003.02; or

(G) If a domestic statutory trust, does not have a certificate of trust filed under § 29-1202.01;

(3) If a domestic entity of a type described in paragraph (2) of this subsection, does business in the District of Columbia after it has been dissolved, whether voluntarily, judicially, or administratively, unless the dissolution has been revoked or the entity has been reinstated in accordance with this title;

(4) If a foreign filing entity, does business in the District of Columbia:

(A) Without having obtained a certificate of registration under § 29-105.02; or

(B) After its certificate of registration has been terminated under § 29-105.11; or

(5) Fails to designate and maintain a registered agent as required by this title.

(b) Civil fines, penalties, and fees imposed by the Mayor under subsection (a) of this section shall be adjudicated pursuant to subchapter I of Chapter 18 of Title 2

(c) The rules proposed pursuant to subsection (a) of this section shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed disapproved.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(3), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “designate” for “appoint” in (a)(5).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter II. Filing.

§ 29-102.01. Entity filing requirements.

(a) To be filed by the Mayor pursuant to this title, an entity filing shall be received by the office of the Mayor, and shall comply with this title, and satisfy the following:

(1) The entity filing shall be required or permitted by this title.

(2) The entity filing shall be physically delivered in written form unless and to the extent the Mayor permits electronic delivery of entity filings in other than written form.

(3) The words in the entity filing shall be in English and numbers shall be in Arabic or Roman numerals, but the name of the entity need not be in English if written in English letters or Arabic or Roman numerals.

(4) The entity filing shall be signed by or on behalf of a person authorized or required under this title to sign the filing.

(5) The entity filing shall state the name and capacity, if any, of each individual who signed it, either by or on behalf of the person authorized or required to sign the filing, but need not contain a seal, attestation, acknowledgment, or verification.

(b) If a law other than this title prohibits the disclosure by the Mayor of information contained in an entity filing, the Mayor shall accept the filing if it otherwise complies with this title, but the Mayor may redact the information.

(c) When an entity filing is delivered to the Mayor for filing, any fee required under this chapter and any fee, tax, or penalty required to be paid under this title or law other than this title shall be paid in a manner permitted by the Mayor or by that law.

(d) The Mayor may require that an entity filing delivered in written form be accompanied by an identical or conformed copy.

(e) Any record filed under this title may be signed by an agent.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(4), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “or on behalf of a person authorized or required” for “an individual authorized” in (a)(4); and “each individual who signed it, either by or on behalf of the person authorized or required to sign the filing” for “the individual who signed it” in

(a)(5); substituted “title” for “section” in (b); and added (e).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-102.03. Effective time and date.

Except as otherwise provided in this title and subject to § 29-102.05(d), an entity filing shall be effective:

(1) On the date and at the time of its filing by the Mayor as provided in § 29-102.06;

(2) On the date of filing and at the time specified in the entity filing as its effective time, if later than the time under paragraph (1) of this section;

(3) If permitted by this title, at a specified delayed effective time and date, which shall not be more than 90 days after the date of filing; or

(4) If a delayed effective date as permitted by this title is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(5), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “this title” for “§ 29-102.04” and “§ 29-102.05(d)” for “§ 29 102.05(c)” in the introductory language; and added “which may not be more than 90 days after the date of filing” at the end of (4).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-102.04. Withdrawal of filed record before effectiveness.

(a) The parties to a filed record may withdraw the record before it takes effect.

(b) To withdraw a filed record, the parties to the record shall deliver to the Mayor for filing a statement of withdrawal.

(c) A statement of withdrawal shall:

(1) Except as otherwise agreed by the parties, be signed on behalf of each party that signed the filed record being withdrawn;

(2) Identify the filed record to be withdrawn, the date of its filing, and the parties to it; and

(3) If not filed by all parties, state that the filed record has been withdrawn in accordance with the agreement of the parties.

(d) Upon filing by the Mayor of a statement of withdrawal, the action or transaction evidenced by the original filed record shall not take effect.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(6), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Upon filing by” for “On the delivery for filing to” in (d).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-102.05. Correcting filed record.

(a) A person on whose behalf a filed record was delivered to the Mayor for filing may correct the record if the:

- (1) Record at the time of filing contained an inaccuracy;
- (2) Record was defectively signed; or
- (3) Electronic transmission of the record to the Mayor was defective.

(b) To correct a filed record, the parties to the record shall deliver to the Mayor a statement of correction.

(c) A statement of correction shall:

- (1) Not state a delayed effective date;
- (2) Be signed by the person correcting the filed record;
- (3) Identify the filed record to be corrected or have attached a copy and state the date of its filing;
- (4) Specify the inaccuracy or defect to be corrected; and
- (5) Correct the inaccuracy or defect.

(d) A statement of correction shall be effective as of the effective date of the filed record that it corrects except as to persons relying on the uncorrected filed record and adversely affected by the correction. As to those persons, the statement of correction shall be effective when filed.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(7), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “by” for “on behalf of” in (c)(2).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-102.06. Duty of Mayor to file; review of refusal to file.

(a) The Mayor shall file an entity filing delivered to the Mayor for filing which satisfies this title. The duty of the Mayor under this section is ministerial.

(b) When the Mayor files an entity filing, the Mayor shall record it as filed on the date and at the time of its delivery. After filing an entity filing, the Mayor shall deliver to the person that submitted the filing a copy of the filing with an acknowledgment of the date and time of filing.

(c) If the Mayor refuses to file an entity filing, the Mayor shall return the entity filing or notify the person that submitted the filing not later than 15 business days after the filing is delivered, together with a brief explanation in a record of the reason for the refusal. If an entity files a corrected entity filing within 60 days of the date the document was initially rejected for filing, it shall not be required to pay a filing fee. If the entity files a corrected entity filing after that date, it shall be required to pay the applicable filing fee.

(d) If the Mayor refuses to file an entity filing, the person that submitted the filing may seek review of the refusal by the Superior Court under the following procedures:

(1) The review proceeding shall be commenced by petitioning the court to compel filing of the filing and by attaching to the petition the filing and the explanation of the Mayor of the refusal to file.

(2) The court may summarily order the Mayor to file the filing or take other action the court considers appropriate.

(3) The final decision of the court may be appealed as in other civil proceedings.

(e) The filing of or refusal to file an entity filing shall not:

(1) Affect the validity or invalidity of the filing in whole or in part;

(2) Affect the correctness or incorrectness of information contained in the filing; or

(3) Create a presumption that the filing is valid or invalid or that information contained in the filing is correct or incorrect.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(8), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “this title” for “§ 29-102.01” in (a); and in (b) substituted “at the time” for “time” and “person that submitted the filing” for “domestic or foreign entity or its representative”.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-102.08. Certificate of good standing or registration.

(a) On request of any person, the Mayor shall issue a certificate of good standing for a domestic filing entity or a certificate of registration for a registered foreign entity.

(b) A certificate under subsection (a) of this section shall state:

(1) The domestic filing entity’s name or the registered foreign entity’s name used in the District;

(2) In the case of a domestic filing entity:

(A) That its public organic record has been filed and has taken effect;

(B) The date the public organic record became effective; and

(C) The period of the entity’s duration if the records of the Mayor reflect that its period of duration is less than perpetual;

(3) In the case of a registered foreign entity, that it is registered to do business in the District;

(4) That all fees and penalties owed to the District for entity filings collected through the Mayor have been paid if:

(A) Payment is reflected in the records of the Mayor; and

(B) Nonpayment affects the good standing or registration of the domestic or foreign entity;

(5) That the entity's most recent biennial report required by § 29-102.11 has been delivered for filing to the Mayor;

(6) That the records of the Mayor do not reflect that the entity has been dissolved; and

(7) That a dissolution proceeding under § 29-106.02 is not pending.

(c) Subject to any qualification stated in the certificate, a certificate issued by the Mayor under subsection (a) of this section may be relied upon as conclusive evidence that the domestic filing entity is in existence or the registered foreign entity is registered to do business in the District.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(9), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-102.09. Signing of entity filing.

(a) Signing an entity filing shall be an affirmation under the penalties for making false statements that the facts stated in the filing are true in all material respects.

(b) Whenever this title requires a particular individual to sign an entity filing and the individual is deceased or incompetent, the filing may be signed by a personal representative of the individual on behalf of the individual.

(c) A person that signs a record as an agent or legal representative thereby affirms as a fact that the person is authorized to sign the record.

(d) If a person required by this title to sign or deliver a record to the Mayor for filing under this title does not do so, any other person that is aggrieved may petition the Superior Court to order:

(1) The person to sign the record;

(2) The person to deliver the record to the Mayor for filing; or

(3) The Mayor to file the record unsigned.

(e) If the petitioner under subsection (d) of this section is not the entity to which the record pertains, the petitioner shall make the entity a party to the action.

(f) A record filed under subsection (d)(3) of this section is effective without being signed.

(g) If a record delivered to the Mayor for filing under this title and filed by the Mayor contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from a person that signed the record or caused another to sign it on the person's behalf and knew at the time the record was signed that the information was inaccurate.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(10), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “of entity filing” for “constitutes affirmation” in the section heading; added the (a) designation; and added (b) through (g).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-102.10. Delivery by Mayor.

Except as otherwise provided by § 29-106.02 or by law other than this title, the Mayor may deliver any record to a person by delivering it to the person that submitted it, to the address of the person’s registered agent, to the principal office address of the person, or to another address the person provides to the Mayor for delivery, or by delivering the record or notice by means of electronic transmission.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(11), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added “or by delivering the record or notice by means of electronic transmission delivery.”

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Legislative history of Law 19-210. — See note to § 29-101.02.

§ 29-102.11. Biennial report for Mayor.

(a) Each domestic filing entity and limited liability partnership and registered foreign entity shall deliver to the Mayor for filing a biennial report that sets forth:

- (1) The name of the entity and its jurisdiction of formation;
- (2) The name and street and mailing address of the entity’s registered agent in the District;
- (3) The street and mailing address of the entity’s principal office;
- (4) The name of at least one governor; and
- (5) In the case of a registered foreign entity, a statement that the entity is in good standing in its state of formation or, if the entity is not in good standing, a description of the efforts of the entity to bring itself into good standing.

(b) Information in the biennial report shall be current as of the date the report is signed on behalf of the entity.

(c) The 1st biennial report shall be delivered to the Mayor for filing by April 1 of the year following the calendar year in which the public organic record of the domestic filing entity became effective, the statement of qualification of a domestic limited liability partnership became effective, or the foreign filing entity registered to do business in the District. Subsequent biennial reports shall be delivered to the Mayor by April 1st of each 2nd calendar year thereafter.

(d) If a biennial report does not contain the information required by this

subchapter, the Mayor promptly shall notify the reporting domestic or registered foreign entity in a record and return the report for correction.

(e) If a filed biennial report contains the name or address of a registered agent which differs from the information shown in the records of the Mayor immediately before the filing, the differing information in the biennial report shall be considered a statement of change under § 29-104.07, 29-104.08, or 29-104.09.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(12), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “registered” for “qualified” throughout (a) and in (d); and substituted “public organic record of the domestic filing entity became effective, the statement of qualification of a domestic limited liability partnership became effective,” for “domestic filing entity was formed” in (c).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter III. Name of Entity.

§ 29-103.01. Permitted names.

(a) Except as otherwise provided in subsections (b) and (d) of this section, the name of a domestic entity, and the name under which a foreign filing entity or foreign limited liability partnership may register to do business in the District, shall be distinguishable on the records of the Mayor from any:

- (1) Name of another domestic filing entity or limited liability partnership;
- (2) Name of a foreign entity that is registered to do business in the District under subchapter V of this chapter;
- (3) Name that is reserved under § 29-103.03;
- (4) Name that is registered under § 29-103.04; or
- (5) Assumed name registered under subchapter I-C of Chapter 28 of Title 47.

(b) An entity may consent in a record to the use of its name by another registered entity, but the consenting entity must, in a form satisfactory to the Mayor, change its name so that it is distinguishable from any name in any category of names in subsection (a) of this section.

(c) Except as otherwise provided in subsection (d) of this section, in determining whether a name is the same as or not distinguishable on the records of the Mayor from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as “corporation”, “corp.”, “incorporated”, “Inc.”, “professional corporation”, “PC”, “professional association”, “PA”, “Limited”, “Ltd.”, “limited partnership”, “LP”, “limited liability partnership”, “LLP”, “registered limited liability partnership”, “RLLP”, “limited liability limited partnership”, “LLLLP”, “registered limited liability limited partnership”, “RLLLLP”, “limited liability company”, or “LLC”, shall not be taken into account.

(d) An entity may consent in a record to the use of a name that is not

distinguishable on the records of the Mayor from its name except for the addition of a word, phrase, or abbreviation indicating the type of entity described in subsection (c) of this section. In such a case, the entity need not change its name pursuant to subsection (b) of this section.

(e) An entity name shall not contain the words “bank”, “banking”, “credit union”, “insurance”, or words of similar import, without the prior approval of the Mayor.

(f) An entity name shall not be the same as, or so deceptively similar to, the name of any department, agency, or instrumentality of the United States or the District of Columbia so as to mislead the public or cause confusion.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(13), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-103.02. Name requirements for certain types of entities.

(a) The name of a business corporation shall contain the word “corporation”, “incorporated”, “company”, or “limited”, or the abbreviation “Corp.”, “Inc.”, “Co.”, or “Ltd.”, or words or abbreviations of similar import in another language.

(b) The name of a nonprofit corporation need not contain any particular word or abbreviation.

(c) The name of a professional corporation shall contain the phrase “professional corporation” or the abbreviation “P.C.”, or the word “chartered”, or the abbreviation “Chtd”, and may not contain the word “company”, “incorporated”, “corporation”, or “limited”, or an abbreviation of those words.

(d) The name of a limited partnership may contain the name of any partner. If the limited partnership is not a limited liability limited partnership, the name shall contain the phrase “limited partnership” or the abbreviation “L.P.” or “LP” and shall not contain the phrase “limited liability limited partnership” or “registered limited liability limited partnership” or the abbreviation “L.L.L.P.”, “LLLP”, “R.L.L.L.P.”, or “RLLLP”. If the limited partnership is a limited liability limited partnership, the name shall contain the phrase “limited liability limited partnership” or the abbreviation “L.L.L.P.”, “LLLP”, “R.L.L.L.P.”, or “RLLLP” and shall not contain the abbreviation “L.P.” or “LP”.

(e) The name of a limited liability partnership that is not a limited liability limited partnership shall contain the words “limited liability partnership” or “registered limited liability partnership” or the abbreviation “L.L.P.”, “R.L.L.P.”, “LLP”, or “RLLP”. The name of a partnership that is not a limited liability partnership may not contain these names or abbreviations.

(f) The name of a limited liability company other than a professional limited liability company shall contain the words “limited liability company” or

“limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC”. The name of a professional limited liability company shall contain the words “professional limited liability company” or the abbreviation “P.L.L.C.” or “PLLC”. “Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”.

(g) The name of a general cooperative shall contain the words “cooperative association”. “Cooperative” may be abbreviated as “Co-op” or “Coop”. “Association” may be abbreviated as “Assoc.”, “Assoc”, “Assn.”, or “Assn”.

(h) The name of a limited cooperative association shall contain the words “limited cooperative association” or “limited cooperative” or the abbreviation “L.C.A.” or “LCA”. “Limited” may be abbreviated as “Ltd.”. “Cooperative” may be abbreviated as “Co-op.”, “Coop.”, “Co-op”, or “Coop”. “Association” may be abbreviated as “Assoc.”, “Assoc”, “Assn.”, or “Assn”.

(i) The name of a statutory trust may contain the words or abbreviations “company”, “association”, “club”, “foundation”, “fund”, “institute”, “society”, “union”, “syndicate”, “limited”, or “trust”, or words or abbreviations of similar import, and may contain the name of a beneficial owner, a trustee, or any other person.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(14), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added the second sentence in (e); and twice substituted “words or abbreviations” for “words” in (i).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-103.04. Registration of name.

(a) A foreign filing entity or foreign limited liability partnership not registered to do business in the District under subchapter VI of this chapter may register its name, or an alternate name required by § 29-105.06, if the name is distinguishable upon the records of the Mayor from the names that are not available under § 29-103.01.

(b) To register its name or an alternate name required by § 29-105.06, a foreign filing entity or foreign limited liability partnership shall deliver to the Mayor for filing an application setting forth its name, or its name with any addition required by § 29-105.06, and the jurisdiction and date of its formation. If the Mayor finds that the name applied for is available, the Mayor shall register the name for the applicant’s exclusive use.

(c) The registration of a name under this section shall be effective for one year after the date of registration.

(d) A foreign filing entity or foreign limited liability partnership whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than 3 months before the expiration of the registration, to the Mayor for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one-year period.

(e) A foreign filing entity or foreign limited liability partnership with an effective name registration may register as a foreign filing entity or foreign limited liability partnership under its registered name, or may consent in a signed record to the use of that name by another entity.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(15), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “registration” for “filing” in (c); substituted “registration” for “registration year” in (d); and rewrote (e).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter IV. Registered Agent.

§ 29-104.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Designation of agent” means a statement designating a registered agent, that is delivered to the Mayor for filing under § 29-104.11 by a nonregistered foreign entity or domestic nonfiling entity.

(2) “Registered agent filing” means:

(A) The public organic record of a domestic filing entity;

(B) A statement of qualification of a domestic limited liability partnership;

(C) A foreign registration statement filed pursuant to § 29-105.03; or

(D) An designation of a registered agent.

(3) “Represented entity” means a:

(A) Domestic filing entity;

(B) Domestic or limited liability partnership;

(C) Registered foreign entity;

(D) Domestic or foreign unincorporated nonprofit association for which a designation of an agent is in effect;

(E) Domestic nonfiling entity for which a designation of an agent has been filed; or

(F) Nonregistered foreign entity for which a designation of an agent has been filed.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(16), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-104.02. Entities required to designate and maintain registered agent.

The following shall designate and maintain a registered agent in the District:

- (1) A domestic filing entity;
- (2) A domestic limited liability partnership; and
- (3) A registered foreign entity.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(17), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 deleted “that does not maintain a place of business in the District” following “partnership” in (2); and substituted “registered” for “qualified” in (3).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-104.04. Designation of registered agent.

(a) A registered agent filing shall be signed by the entity and state:

- (1) The name of the represented entity’s commercial registered agent; or
- (2) If the entity does not have a commercial registered agent:

(A) The name and address of the entity’s noncommercial registered agent; or

(B) If the entity designates an officer or employee to accept service of process, the title of the office or other position and the address of the business office of that person.

(b) The designation of a registered agent pursuant to subsection (a)(1) or (2)(A) of this section shall be an affirmation under § 29-102.09 by the represented entity that the agent has consented to serve.

(c) The Mayor shall make available in a record as soon as practicable a daily list of filings that contain the name of a registered agent. The list shall:

- (1) Be available for at least 14 calendar days;
- (2) List in alphabetical order the names of the registered agents; and
- (3) State the type of filing and name of the represented entity making the filing.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(18), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Designation” for “Appointment” in the section heading; substituted “shall be signed by the entity and state” for “shall state” in the introductory language of (a); and substituted “designation” for “appointment” in (b).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-104.05. Listing of commercial registered agent.

(a) A person may become listed as a commercial registered agent by

delivering to the Mayor for filing a commercial registered agent listing statement signed by the person which states:

(1) The name of the individual or the name of the entity, type of entity, and jurisdiction of formation of the entity;

(2) That the person is in the business of serving as a commercial registered agent in the District; and

(3) The address of a place of business of the person in the District to which service of process, notices, and demands being served on or sent to entities represented by the person may be delivered.

(b) A commercial registered agent listing statement may include the information regarding acceptance by the agent of service of process in a form other than a written record as provided for in § 29-104.12(e).

(c) If the name of a person delivering to the Mayor for filing a commercial registered agent listing statement is not distinguishable on the records of the Mayor from the name of another commercial registered agent listed under this section, the person shall adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in the District as a commercial registered agent.

(d) The Mayor shall note the filing of the commercial registered agent listing statement in the records maintained by the Mayor for each entity represented by the agent at the time of the filing. The statement has the effect of amending the registered agent filing for each of those entities to:

(1) Designate the person becoming listed as the commercial registered agent of each of those entities; and

(2) Delete the address of the former agent from the registered agent filing of each of those entities.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(19), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor's notes. — Section 2(a)(19)(B) of D.C. Law 19-210 provided: "(B) Subsection (b) is amended by striking the phrase 'and other

notice and documents' and inserting the phrase ' , notices, and demands' in its place." Because this language did not match the statute text of § 29-104.05(b), the amendment could not be implemented.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-104.06. Termination of listing of commercial registered agent.

(a) A commercial registered agent may terminate its listing as a commercial registered agent by delivering to the Mayor for filing a commercial registered agent termination statement signed by the agent which states:

(1) The name of the agent as listed under § 29-104.05; and

(2) That the agent is no longer in the business of serving as a commercial registered agent in the District.

(b) A commercial registered agent termination statement shall be effective

at 12:01 a.m. on the 31st day after the day on which it is delivered to the Mayor for filing.

(c) The commercial registered agent promptly shall furnish each entity represented by the agent notice in a record of the filing of the commercial registered agent termination statement.

(d) When a commercial registered agent termination statement takes effect, the commercial registered agent ceases to be a registered agent for each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent designates a new registered agent, service of process may be made on the entity pursuant to § 29-104.12. Termination of the listing of a commercial registered agent under this section shall not affect any contractual rights a represented entity has against the agent or that the agent has against the entity.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(20), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 deleted “or on behalf of” following “signed by” in (a); and in (d) substituted “a registered agent for” for “an agent for service of process on”, and “designates” for “appoints”.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-104.07. Change of registered agent by entity.

(a) A represented entity may change the information on file under § 29-104.04(a) by delivering to the Mayor for filing a statement of change signed on behalf of an authorized person on behalf of the entity which states the:

- (1) Name of the entity; and
- (2) Information that is to be in effect as a result of the filing of the statement of change.

(b) The interest holders or governors of a domestic entity need not approve the filing of a:

- (1) Statement of change under this section; or
- (2) Similar filing changing the registered agent or registered office, if any, of the entity in any other jurisdiction.

(c) A statement of change under this section designating a new registered agent shall be an affirmation under § 29-102.09 by the represented entity that the agent has consented to serve.

(d) As an alternative to using the procedure in this section, a represented entity may change the information on file under § 29-104.04(a) by amending its most recent registered agent filing in a manner provided by law of the District other than this title for amending the filing.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(21), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “signed on behalf of” for “signed by” in (a);

substituted “registered office, if any” for “registered office” in (b)(2); substituted “designating” for “appointing” in (c); repealed former (d),

which read: “A statement of change under this section shall be effective on delivery to the Mayor for filing”; and redesignated former (e) as (d).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-104.08. Change of name, address, type of entity, or jurisdiction of formation by noncommercial registered agent.

(a) If a noncommercial registered agent changes its name, its address in effect with respect to a represented entity under § 29-104.04(a), its type of entity, or its jurisdiction of formation, the agent shall deliver to the Mayor for filing, with respect to each entity represented by the agent, a statement of change signed by the agent which states:

- (1) The name of the entity;
- (2) The name and address of the agent in effect with respect to the entity;
- (3) If the name of the agent has changed, the new name;
- (4) If the address of the agent has changed, the new address; and
- (5) If the agent is an entity:
 - (A) If the type of entity has changed, the new type of entity; and
 - (B) If the jurisdiction of formation has changed, the new jurisdiction of formation.

(b) A noncommercial registered agent promptly shall furnish the represented entity with notice in a record of the delivery to the Mayor for filing of a statement of change and the changes made in the statement.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(22), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-104.09. Change of name, address, type of entity, or jurisdiction of formation by commercial registered agent.

(a) If a commercial registered agent changes its name, its address as listed under § 29-104.05(a)(3), its type of entity, or its jurisdiction of formation, the agent shall deliver to the Mayor for filing a statement of change signed by the agent which states:

- (1) The name of the agent as listed under § 29-104.05(a)(1);
- (2) If the name of the agent has changed, the new name;
- (3) If the address of the agent has changed, the new address;
- (4) If the type of entity has changed, the new type of entity; and
- (5) If the jurisdiction of formation of the entity has changed, the new jurisdiction of formation.

(b) The filing by the Mayor of a statement of change under subsection (a) of this section shall change the information regarding the agent with respect to each entity represented by the agent.

(c) A commercial registered agent promptly shall furnish each entity represented by it notice in a record of the filing by the Mayor of a statement of change relating to the name or address of the agent and the changes made in the statement.

(d) If a commercial registered agent changes its address without delivering for filing a statement of change as required by this section, the Mayor may cancel the listing of the agent under § 29-104.05. A cancellation under this subsection shall have the same effect as a termination under § 29-104.06. Promptly after canceling the listing of an agent, the Mayor shall serve notice in a record in the manner provided in § 29-104.12(b) or (c) on:

(1) Each entity represented by the agent, stating that the agent has ceased to be a registered agent for the entity and that, until the entity designates a new registered agent, service of process may be made on the entity as provided in § 29-104.12; and

(2) The agent, stating that the listing of the agent has been canceled under this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(23), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 deleted “or on behalf of” following “signed by” in (a); substituted “filing by the Mayor” for “delivery to the Mayor for filing by a commercial registered agent” in (b); substituted “filing by the Mayor” for “delivery to the Mayor for filing” in (c); and in (d)(1) substituted “a registered agent for” for

“an agent for service of process on” and “designates” for “appoints”.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-104.10. Resignation of registered agent.

(a) A registered agent may resign as agent for a represented entity by delivering to the Mayor for filing a statement of resignation signed by the agent which states:

(1) The name of the entity;
 (2) The name of the agent;
 (3) That the agent resigns from serving the registered agent for the entity; and

(4) The address of the entity to which the agent will send the notice required by subsection (c) of this section.

(b) A statement of resignation shall be effective on the earlier of the 31st day after the day on which it is filed by the Mayor or the designation of a new registered agent for the represented entity.

(c) A registered agent promptly shall furnish the represented entity notice in a record of the date on which a statement of resignation was filed by the Mayor.

(d) When a statement of resignation takes effect, the registered agent shall

cease to have responsibility under this subchapter for any matter thereafter tendered to it as agent for the represented entity. The resignation shall not affect any contractual rights the entity has against the agent or that the agent has against the entity.

(e) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(24), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 deleted “or on behalf of” following “signed by” in the introductory language of (a); substituted “the registered agent” for “agent for service of process” in (a)(3); substituted “designation” for “appointment” in (b); substituted “filed by the Mayor” for “delivered to the Mayor for filing” in (b) and (c); and

substituted “responsibility under this subchapter for any matter thereafter tendered” for “responsibility for any matter tendered” in (d).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-104.11. Designation of registered agent by nonregistered foreign entity or nonfiling domestic entity.

(a) A nonregistered foreign entity or domestic nonfiling entity may deliver to the Mayor for filing a statement designating a registered agent signed by the entity which states the:

- (1) Name, type of entity, and jurisdiction of formation of the entity; and
- (2) Information required by § 29-104.04(a).

(b) A statement designating a registered agent under subsection (a) of this section is effective on filing by the Mayor and shall be effective for 5 years after the date of filing unless canceled or terminated earlier.

(c) Designation of a registered agent under subsection (a) of this section does not register a nonregistered foreign entity to do business in the District.

(d) A statement designating a registered agent under subsection (a) of this section may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the Mayor from the name of another entity appearing in those records. The filing of the statement shall not make the name of the entity filing the statement unavailable for use by another entity.

(e) An entity that delivers to the Mayor for filing a statement under subsection (a) of this section designating a registered agent may cancel the statement by delivering to the Mayor for filing a statement of cancellation that states the name of the entity and that the entity is canceling its designation of a registered agent in the District. The statement shall be effective on filing by the Mayor.

(f) A statement designating a registered agent under subsection (a) of this section for a nonregistered foreign entity terminates on the date the entity becomes a registered foreign entity.

(g) A statement under subsection (a) of this section must be signed by a person authorized to manage the affairs of the nonregistered foreign entity or

domestic nonfiling entity and by the person designated as the agent. The signing of the statement is an affirmation of fact that the person is authorized to manage the affairs of the entity and that the agent has consented to serve.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(25), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “appoint” or its variants for “designate” or its variants throughout the section and in the section heading; substituted “nonregistered” for “nonqualified” throughout the section and in the section heading; substituted “by” for “on behalf of” in (a); substituted “designating a registered agent under subsection (a) of this section is” for “appointing a registered agent shall be” in (b); substituted “subsection (a) of this section does not register a nonregistered” for “this section shall not qualify a” in (c); substituted “designating a registered agent un-

der subsection (a) of this section may” for “appointing a registered agent shall” in (d); substituted “designation of a registered agent” for “appointment of an agent for service of process” in (e); substituted “designating a registered agent under subsection (a) of this section” for “appointing a registered agent” in (f); and added (g).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-104.12. Service of process, notice, or demand on entity.

(a) A represented entity may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

(b) If a represented entity ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the entity at its principal office in accordance with any applicable judicial rules and procedures. The address of the principal office shall be shown as in the entity’s most recent biennial report filed by the Mayor. Service shall be effective under this subsection on the earliest of:

(1) The date that the entity receives the mail or delivery by a similar commercial delivery service;

(2) The date shown on the return receipt, if signed by the entity; or

(3) Five days after its deposit with the United States Postal Service or similar commercial delivery service, if correctly addressed and with sufficient postage or payment.

(c) Service may be made by handing a copy of the process, notice, or demand to an officer of the entity, a managing or general agent of the entity, or any other agent authorized by designation or by law to receive service of process for the entity if the individual served is not a plaintiff in the action.

(d) If an entity fails to designate or maintain a registered agent in the District as required by law, or if an entity’s registered agent in the District cannot with reasonable diligence be found, and if the person seeking service submits a declaration under penalty of making false statements showing that a registered agent for the entity cannot be found, the Mayor shall be an agent of the entity upon whom any process against the entity may be served and upon whom any notice or demand required or permitted by law to be served

upon the entity may be served. Service on the Mayor of the process, notice, or demand shall be made by delivering or leaving with the Mayor, or his designee, duplicate copies of the process, notice, or demand. If any process, notice, or demand is so served, the Mayor shall immediately cause one of the copies to be forwarded by registered or certified mail to the entity at its principal office or at its last known address.

(e) Service of process, notice, or demand on a registered agent shall be in a written record, but service may be made on a commercial registered agent in other forms, and subject to such requirements, as the agent has stated in its listing under § 29-104.05 that it will accept.

(f) Service of process, notice, or demand may be made by other means under law other than this title.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(26), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 in rewrote the introductory language of (b); substituted “by” for “on behalf of” in (b)(2); substituted “designation” for “appointment” in (c); and in rewrote the first sentence in (d).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-104.13. Duties of registered agent.

The only duties of a registered agent under this subchapter are:

(1) Forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;

(2) Provide the notices required by this title to the entity at the address most recently supplied to the agent by the entity;

(3) If the agent is a noncommercial registered agent, keep current the information required by § 29-104.04(a) in the most recent registered agent filing for the entity; and

(4) If the agent is a commercial registered agent, keep current the information listed for it under § 29-104.05(a).

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(27), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “only duties of a registered agent under this subchapter are” for “duties of a registered agent shall be” in the introductory language.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-104.14. Personal jurisdiction.

The designation or maintenance in the District of a registered agent shall not by itself create the basis for personal jurisdiction over the represented entity in the District.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(28), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “designation” for “appointment”.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter V. Foreign Entities.

§ 29-105.02. Registration to do business in the District.

(a) A foreign filing entity or foreign limited liability partnership shall not do business in the District until it registers with the Mayor under this chapter.

(b) A foreign filing entity or foreign limited liability partnership doing business in the District may not maintain an action or proceeding in the District unless it is registered to do business in the District.

(c) The failure of a foreign filing entity or foreign limited liability partnership to register to do business in the District shall not impair the validity of a contract or act of the foreign filing entity or foreign limited liability partnership or preclude it from defending an action or proceeding in the District.

(d) The liability of an interest holder or governor of a foreign filing entity or of a partner of a foreign limited liability partnership shall be governed by the laws of its jurisdiction of formation. Any limitation on that liability shall be not waived shall [sic] solely because the foreign filing entity or foreign limited liability partnership does business in the District without registering.

(e) Section 29-105.01(a) and (b) shall apply even if a foreign entity fails to register under this chapter.

(f) A foreign filing entity that does business in the District without being registered under § 29-105.03 shall be liable for all fees, penalties, and other charges for which the entity would have been liable if it had registered and had filed all reports required by this chapter for the period during which it did business in the District. The Attorney General for the District of Columbia may bring an action in the Superior Court of the District of Columbia to recover these fees, penalties, and other charges. A foreign entity shall not be registered under this chapter until it has paid these fees, penalties, and other charges.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(29), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “may not maintain an action or proceeding” for “shall not maintain an action” in (b); and substituted “an action or proceeding” for “a proceeding” in (c).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-105.03. Foreign registration statement.

To register to do business in the District, a foreign filing entity or foreign

limited liability partnership shall deliver a foreign registration statement to the Mayor for filing. The statement shall be signed by the entity and state:

(1) The name of the foreign filing entity or foreign limited liability partnership and, if the name does not comply with § 29-103.01, an alternate name adopted pursuant to § 29-105.06(a);

(2) The type of entity and, if it is a limited partnership, whether it is a limited liability limited partnership;

(3) The entity's jurisdiction of formation;

(4) The street and mailing address of the principal office of the entity and, if the laws of its jurisdiction of formation require it to maintain an office in that jurisdiction, the street and mailing address of the office;

(5) The information required by § 29-104.04(a);

(6) The names and street and mailing addresses of a governor;

(7) A certificate, issued not later than 90 days prior to the filing date, by an authorized officer of the jurisdiction of formation, evidencing its existence as a filing entity;

(8) A brief statement of the business the entity proposes to do in the District; and

(9) A statement of the date it commenced or intends to do business in the District.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(30), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “shall be signed by the entity and state” for “shall state” in the introductory language; and substituted “entity” for “foreign filing entity or foreign limited liability partnership” in (4).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-105.04. Amendment of foreign registration statement.

(a) A registered foreign entity shall deliver to the Mayor for filing an amendment to its foreign registration statement if there is a change in the:

(1) Name of the entity;

(2) Type of entity, including, if it is a limited partnership, whether the entity became or ceased to be a limited liability limited partnership;

(3) Jurisdiction of formation;

(4) Address or addresses required by § 29-105.03(4); or

(5) Information required by § 29-104.04(a).

(b) The requirements of § 29-105.03 for an original foreign registration statement apply to an amendment of a foreign registration statement under this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(31), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “registered foreign entity” for “foreign entity registered to do business in the District” in the introductory language of (a).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-105.05. Activities not constituting doing business.

(a) Without excluding other activities that do not have the intra-District presence necessary to constitute doing business in the District under this title, a foreign filing entity or foreign limited liability partnership shall not be considered to be doing business in the District under this title solely by reason of carrying on in the District any one or more of the following activities:

(1) Maintaining, defending, mediating, arbitrating, or settling an action or proceeding;

(2) Carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors;

(3) Maintaining accounts in financial institutions;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of interests of the entity or maintaining trustees or depositories with respect to those interests;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders by any means if the orders require acceptance outside the District before they become contracts;

(7) Creating or acquiring indebtedness, mortgages, or security interests in property;

(8) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

(9) Conducting an isolated transaction that is not in the course of similar transactions; and

(10) Doing business in interstate commerce.

(b) This section shall not apply in determining the contacts or activities that may subject a foreign filing entity or foreign limited liability partnership to service of process, taxation, or regulation under law of the District other than this title.

(c) A person does not do business in the District solely by being an interest holder or governor of a foreign entity that does business in the District.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(32), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “an action or proceeding” for “a proceeding” in (a)(1); substituted “of the entity” for “in the entity” in (a)(4); and added (c).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-105.06. Noncomplying name of foreign entity.

(a) A registered foreign entity whose name does not comply with § 29-

103.01 for an entity of its type shall not register to do business in the District until it adopts, for the purpose of doing business in the District, an alternate name that complies with § 29-103.01. A registered foreign entity that registers under an alternate name under this subsection need not comply with subchapter I-C of Chapter 48 of Title 47. After registering to do business in the District with an alternate name, a registered foreign entity may do business in the District under:

- (1) The alternate name;
- (2) Its entity name, with the addition of its jurisdiction of formation clearly identified; or
- (3) An assumed or fictitious name the entity is authorized to use under subchapter I-C of Chapter 48 of Title 47.

(b) If a registered foreign entity changes its name to one that does not comply with § 29-103.01, it shall not do business in the District until it complies with subsection (a) of this section by amending its registration to adopt an alternate name that complies with § 29-103.01.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(33), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “registered foreign entity” for “foreign filing entity or foreign limited liability partnership” throughout the section.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-105.07. Withdrawal of registration of registered foreign entity.

(a) A registered foreign entity may withdraw its registration by delivering a statement of withdrawal to the Mayor for filing. The statement of withdrawal shall be signed by the entity and state:

- (1) The name of the foreign entity and the name of the jurisdiction under whose law it is formed;
- (2) The type of entity, including, if it is a limited partnership, whether it is a limited liability limited partnership;
- (3) That the entity is not doing business in the District and that it withdraws its registration to do business in the District;
- (4) That the entity revokes the authority of its registered agent to accept service on its behalf in the District; and
- (5) An address to which service of process may be made under subsection (b) of this section.

(b) After the withdrawal of the registration of an entity, service of process in any action or proceeding based on a cause of action arising during the time it was registered to do business in the District may be made pursuant to § 29-104.12.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(34), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “registered foreign entity” for “foreign entity registered to do business in the District” and “shall be signed by the entity and state” for “shall state” in the introductory language of (a); substituted “on its behalf in the District” for “on

its behalf” in (a)(4); and substituted “action or proceeding” for “proceeding” in (b).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-105.08. Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.

A registered foreign entity that converts to any type of domestic filing entity or to a domestic limited liability partnership shall be deemed to have withdrawn its registration on the effective date of the conversion.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(35), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “registered foreign entity that” for “qualified foreign entity registered to do business in the District which”; and “domestic” for “domestic registered”.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-105.09. Withdrawal on dissolution or conversion to nonfiling entity other than limited liability partnership.

(a) A registered foreign entity that has dissolved and completed winding up or that has converted to a domestic or foreign nonfiling entity other than a limited liability partnership shall deliver a statement of withdrawal to the Mayor for filing. The statement shall be signed by the entity and state:

(1) The name of the foreign entity and the name of the jurisdiction under whose law it was formed before the dissolution or conversion;

(2) The type of entity that the foreign entity was before the dissolution or conversion;

(3) That the foreign entity surrenders its registration to do business in the District as a registered entity; and

(4) If the foreign entity has converted to a foreign nonfiling entity other than a foreign limited liability partnership:

(A) The type of nonfiling entity to which it has converted and the jurisdiction whose laws govern its internal affairs;

(B) That the foreign entity revokes the authority of its registered agent to accept service on its behalf; and

(C) A mailing address to which service of process may be made under subsection (b) of this section.

(b) After the withdrawal under this section of a foreign filing entity that has converted to a foreign nonfiling entity is effective, service of process in any proceeding based on a cause of action arising during the time it was registered to do business in the District may be made pursuant to § 29-104.12.

(c) After the withdrawal under this section of a foreign filing entity that has converted to a domestic nonfiling entity other than a limited liability partnership is effective, service of process may be made on the nonfiling entity pursuant to § 29-104.12.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(36), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 in the introductory language of (a) substituted “registered foreign entity that has dissolved and completed winding up or that has converted” for “foreign entity registered to do business in the District which dissolves or converts” and “shall be signed by the entity and state” for “shall state”;

and substituted “registered” for “qualified” in (a)(3).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-105.10. Transfer of registration.

(a) A registered foreign entity that merges into a nonregistered foreign entity or converts to a foreign entity required to register with the Mayor to do business in the District shall deliver to the Mayor for filing an application for transfer of registration. The application shall be signed by the entity and state the:

- (1) Name of the registered foreign entity before merger or conversion;
- (2) Type of entity it was before the merger or conversion;
- (3) Name of the applicant entity and, if the name does not comply with § 29-103.01, an alternate name adopted pursuant to § 29-105.06(a);
- (4) Type of applicant entity and its jurisdiction of formation; and
- (5) Following information regarding the applicant entity or to which it has been converted, if different than the information for the foreign entity before the merger or conversion:

(A) The street and mailing address of the principal office of the entity and, if the law of the entity’s jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing address of that office; and

(B) The information required by § 29-104.04(a).

(b) When an application for transfer of registration takes effect, the registration of the registered foreign entity to do business in the District shall be transferred without interruption to the entity into which it has merged or to which it has been converted.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(37), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-105.11. Termination of registration.

(a) The Mayor may terminate the registration of a registered foreign entity in the manner provided in subsections (b) and (c) of this section if the entity does not:

- (1) Pay, not later than 60 days after the due date, any fee or penalty required to be paid to the Mayor under this chapter or law other than this title;
- (2) Deliver to the Mayor for filing, not later than 60 days after the due date, the biennial report, if any, a biennial report;
- (3) Have a registered agent as required by § 29-104.02; or
- (4) Deliver to the Mayor for filing a statement of change under § 29-104.07 not later than 30 days after a change occurs in the name or address of the entity's registered agent.

(b) The Mayor shall terminate the registration of a registered foreign entity by noting the termination in the records of the Mayor and may deliver a copy of the notice or the information in the notation to the entity's registered agent in the District or, if the entity does not have a registered agent in the District, to the entity's principal office as designated in § 29-105.03(4). The notice shall state or the information in the notation shall include the:

- (1) Effective date of the termination, which must be at least 60 days after the date the Mayor delivers the copy; and
- (2) Grounds for termination under subsection (a) of this section.

(c) The authority of a registered foreign entity to do business in the District shall cease on the effective date of the notice of termination or notation filed under subsection (b) of this section unless, before that date, the entity cures each ground for termination stated in the notice or notation. If the entity cures each ground, the Mayor shall file a record so stating.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(38), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VI. Administrative Dissolution.

§ 29-106.01. Grounds.

The Mayor may commence a proceeding under § 29-106.02 to dissolve a domestic filing entity administratively if the entity does not:

- (1) Pay any fee or penalty required to be paid to the Mayor not later than 5 months after it is due;
- (2) Deliver a biennial report to the Mayor not later than 5 months after it is due; or
- (3) Have a registered agent in the District for 60 days.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(39), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 deleted “tax” following “fee” in (a); and substituted “5 months” for “6 months” in (b).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-106.02. Procedure and effect.

(a) If the Mayor determines that one or more grounds exist under § 29-106.01 for dissolving a domestic filing entity, the Mayor shall serve the entity pursuant to § 29-104.12 with notice in a record of the Mayor’s determination.

(b) If a domestic filing entity, not later than 60 days after service of the notice required by subsection (a) of this section does not cure each ground for dissolution or demonstrate to the satisfaction of the Mayor that each ground determined by the Mayor does not exist, after the expiration of the 60-day period, the Mayor shall dissolve the entity administratively by signing a statement of dissolution that recites the grounds for dissolution and its effective date. The Mayor shall file the statement and serve a copy on the entity pursuant to § 29-104.12 and publish a notice of the statement on an appropriate website.

(c) A domestic filing entity that is dissolved administratively continues its existence as an entity, but shall not carry on any activities or affairs except as necessary to wind up its activities and affairs and liquidate its assets in the manner provided in its organic law or to apply for reinstatement under § 29-106.03.

(d) The administrative dissolution of a domestic filing entity shall not terminate the authority of its registered agent.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(40), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “required by subsection (a) of this section does not cure” for “is effected under § 29-104.12, does not correct”, and deleted “the original of” following “statement” in (b); and in (c) substituted “any activities or affairs” for “any business”, and “wind up its activities and affairs

and liquidate its assets” for “wind up and liquidate its business and affairs”.

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-106.03. Reinstatement.

(a) A domestic filing entity that is dissolved administratively under § 29-106.02 may apply to the Mayor for reinstatement. The application shall be signed by the entity and state:

(1) The name of the entity at the time of its administrative dissolution and, if needed, a different name that satisfies § 29-103.01;

(2) The address of the principal office of the entity and the name and address of the registered agent;

(3) The effective date of the entity's administrative dissolution; and

(4) That the grounds for dissolution either did not exist or have been cured.

(b) To be reinstated, an entity shall pay all fees and penalties that were due to the Mayor at the time of its administrative dissolution and all fees and penalties that would have been due to the Mayor while the entity was dissolved administratively.

(c) If the Mayor determines that an application under subsection (a) of this section contains the information required by subsection (a) of this section, is satisfied that the information is correct, and determines that all payments required to be made to the Mayor by subsection (b) of this section have been made, the Mayor shall cancel the statement of dissolution and prepare a statement of reinstatement that states the Mayor's determination and the effective date of reinstatement, file the statement, and serve a copy on the entity pursuant to § 29-104.12.

(d) When reinstatement under this section is effective, it shall relate back to, and be effective, as of the effective date of the administrative dissolution, and the domestic filing entity shall resume carrying on its activities and affairs as if the administrative dissolution had never occurred, except for the rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had reason to know of the reinstatement.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(41), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "shall be signed by the entity and state" for "shall state" in the introductory language of (a); substituted "cured" for "eliminated" in (a)(4); twice deleted "taxes," following "fees" in (b); in (c) substituted "an application under subsection (a) of this section" for "the application," and

deleted "the original of" following "file"; and substituted "activities and affairs" for "business" in (d).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VII. Miscellaneous Provisions.

§ 29-107.01. Reservation of power to amend or repeal.

(a) The Council may amend or repeal all or part of this title at any time and all domestic and foreign entities subject to this title shall be governed by the amendment or repeal.

(b) The following rules apply to a corporation formed in the District before the effective date of the District of Columbia Business Corporations Act, approved June 8, 1954 (Pub. L. 83-389; 68 Stat. 179), or the District of Columbia Nonprofit Corporation Act, approved August 6, 1962 (Pub. L. No. 87-569; 76 Stat. 265), which did not elect to avail itself of the provisions of those acts:

(1) Until January 1, 2014, the corporation shall be governed by the

statute under which it was formed as if that statute had not been repealed by this act.

(2) Before January 1, 2014, the corporation may elect to avail itself of the provisions of this title by adopting a resolution making this election, and by delivering to the Mayor for filing a copy of the resolution and a copy of the corporation's articles of incorporation. Upon filing by the Mayor of the resolution and articles, the corporation shall be deemed to exist under this title. The corporation shall file a biennial report, as required by § 29-102.11, by the next April 1 following the date of delivery of the resolution and articles to the Mayor for filing.

(3) A corporation that has not previously elected to avail itself of the provisions of this title by April 1, 2014, pursuant to paragraph (2) of this subsection and desires to do business in the District is subject to this title to the extent that it shall be required to file a biennial report under § 29-102.11, a copy of its articles of incorporation, and the names and addresses of its current directors and officers and designate a registered agent. The corporation shall file biennial reports under § 29-102.11 every 2 years thereafter

(4) Any corporation that does not fully comply with either paragraph (2) or (3) of this subsection shall become otherwise subject to this title by January 1, 2014 and is thereafter barred from asserting that it is not subject to this title.

(c)(1) Notwithstanding subsections (a) and (b) of this section, any nonprofit corporation chartered by a special act of Congress may elect to become a domestic nonprofit corporation under this title or to register as a corporation chartered by special act of Congress.

(2) The corporation may elect to avail itself of the provisions of this title by adopting a resolution making this election, and by delivering to the Mayor for filing a copy of the resolution and a copy of the corporation's congressional charter and subsequent amendments and by filing restated articles of incorporation. Upon filing by the Mayor of the resolution and articles, the corporation shall be deemed to exist under this title. In the event such election is made, to the extent the provisions of this title, including chapter 4 (the Nonprofit Corporations Act of 2010), are inconsistent with such nonprofit corporation's congressional charter or its bylaws, the provisions of such nonprofit corporation's congressional charter and bylaws shall prevail.

(3) If the corporation does not elect to avail itself to the provisions of this title pursuant to paragraph (2) of this subsection, the corporation shall register with the Mayor by delivering a statement that contains the corporation's name, date of formation, name and address of one governor, name and address of its registered agent and copy of its federal charter and subsequent amendments by January 1, 2014. Once registered, the corporation shall file biennial reports as required by section § 29-102.11 and maintain its registered agent as required by § 29-104.04.

(4) Neither the issuance of a certificate of election pursuant to paragraph (2) of this subsection nor the issuance of certificate of registration pursuant to paragraph (3) of this subsection to a corporation created under the provisions of a special act of Congress, nor the adoption of any amendment pursuant to

this title, shall release or terminate any duty or obligation expressly imposed upon any such corporation under and by virtue of the special act of Congress under which it was created or any amendment made thereto, nor enlarge any right, power, or privilege granted any such corporation by such special act except to the extent that such right, power, or privilege might have been included in the articles of a corporation organized under this title.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a)(42), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote (b); and added (c).

Legislative history of Law 19-210. — See note to § 29-101.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

CHAPTER 2. ENTITY TRANSACTIONS.

<i>Subchapter I. General Provisions</i>	
Sec.	
29-201.02. Definitions.	
29-201.04. Required notice or approval.	
29-201.05. Status of filings.	
<i>Subchapter II. Merger</i>	
29-202.01. Merger authorized.	
29-202.02. Plan of merger.	
29-202.03. Approval of merger.	
29-202.04. Amendment or abandonment of plan of merger.	
29-202.05. Statement of merger; effective date.	
29-202.06. Effect of merger.	
<i>Subchapter III. Interest Exchange</i>	
29-203.01. Interest exchange authorized.	
29-203.02. Plan of interest exchange.	
29-203.03. Approval of interest exchange.	
29-203.04. Amendment or abandonment of plan of interest exchange.	
29-203.05. Statement of interest exchange; effective date.	

Sec.	
29-203.06. Effect of interest exchange.	
<i>Subchapter IV. Conversion</i>	
29-204.01. Conversion authorized.	
29-204.02. Plan of conversion.	
29-204.03. Approval of conversion.	
29-204.04. Amendment or abandonment of plan of conversion.	
29-204.05. Statement of conversion; effective date.	
29-204.06. Effect of conversion.	
<i>Subchapter V. Domestication</i>	
29-205.01. Domestication authorized.	
29-205.02. Plan of domestication.	
29-205.03. Approval of domestication.	
29-205.04. Amendment or abandonment of plan of domestication.	
29-205.05. Statement of domestication; effective date.	
29-205.06. Effect of domestication.	

Subchapter I. General Provisions.

§ 29-201.02. Definitions.

- For the purpose of this chapter, the term:
- (1) “Acquired entity” means the entity, all of one or more classes or series of interests in which are acquired in an interest exchange.
 - (2) “Acquiring entity” means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.
 - (3) “Approve” means, in the case of an entity, for its governors and interest

holders to take whatever steps are necessary under its organic rules, organic law, and other law to:

- (A) Propose a transaction subject to this chapter;
- (B) Adopt and approve the terms and conditions of the transaction; and
- (C) Conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders.

(4) “Conversion” means a transaction authorized by subchapter IV of this chapter.

(5) “Converted entity” means the converting entity as it continues in existence after a conversion.

(6) “Converting entity” means the domestic entity that approves a plan of conversion pursuant to § 29-204.03 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

(7) “Domestic entity” means an entity whose internal affairs are governed by the law of the District.

(8) “Domesticated entity” means the domesticating entity as it continues in existence after a domestication.

(9) “Domesticating entity” means the domestic entity that approves a plan of domestication pursuant to § 29-205.03 or the foreign entity that approves a domestication pursuant to the law of its jurisdiction of formation.

(10) “Domestication” means a transaction authorized by subchapter V of this chapter.

(11) “Interest exchange” means a transaction authorized by subchapter III of this chapter.

(12) “Interest holder liability” means:

(A) Personal liability for a liability of an entity that is imposed on a person:

- (i) Solely by reason of the status of the person as an interest holder;

or

(ii) By the organic rules of the entity pursuant to a provision of the organic law authorizing the organic rules to make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(B) An obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(13) “Merger” means a transaction in which 2 or more merging entities are combined into a surviving entity pursuant to a filing with the Mayor.

(14) “Merging entity” means an entity that is a party to a merger and exists immediately before the merger becomes effective.

(15) “Plan” means a plan of merger, interest exchange, conversion, or domestication.

(16) “Plan of conversion” means a plan under § 29-204.02.

(17) “Plan of domestication” means a plan under § 29-205.02.

(18) “Plan of interest exchange” means a plan under § 29-203.02.

(19) “Plan of merger” means a plan under § 29-202.02.

(20) “Protected agreement” means:

(A) A record evidencing indebtedness and any related agreement in effect on the effective date of this chapter;

(B) An agreement that is binding on an entity on the effective date of this chapter;

(C) The organic rules of an entity in effect on the effective date of this chapter; or

(D) An agreement that is binding on any of the governors or interest holders of an entity on the effective date of this chapter.

(21) “Statement of conversion” means a statement under § 29-204.05.

(22) “Statement of domestication” means a statement under § 29-205.05.

(23) “Statement of interest exchange” means a statement under § 29-203.05.

(24) “Statement of merger” means a statement under § 29-202.05.

(25) “Surviving entity” means the entity that continues in existence after, or is created by, a merger under subchapter 2 of this chapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(1), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — Law 19-210, the “District of Columbia Official Code Title 29 Technical and Harmonizing Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-532. The Bill was adopted on first and second readings on July

10, 2012, and Oct. 2, 2012, respectively. Signed by the Mayor on Oct. 31, 2012, it was assigned Act No. 19-512 and transmitted to Congress for its review. D.C. Law 19-210 became effective on Mar. 5, 2013.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-201.04. Required notice or approval.

(a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or District Government Official to be a party to a merger shall give the notice, or obtain the approval, to be a party to an interest exchange, conversion, or domestication.

(b) Property held for a charitable purpose under the law of the District by a domestic or foreign entity immediately before a transaction under this chapter becomes effective shall not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred, unless, to the extent required by or pursuant to the law of the District concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the Superior Court specifying the disposition of the property.

(c) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity. A trust obligation that would govern property if transferred to the nonsurviving entity applies to property that is transferred to the surviving entity under this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(2), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “District Government official” for “officer” in (a); substituted “devised, or otherwise transferred” for “or devised” in (b); and added (c).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-201.05. Status of filings.

A filing under this chapter signed by a domestic entity shall become part of the public organic record of the entity if the entity’s organic law provides that similar filings under that law become part of the public organic record of the entity.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(3), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 twice substituted “record” for “document.”

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter II. Merger.

§ 29-202.01. Merger authorized.

(a) Except as otherwise provided in this section, by complying with this subchapter:

(1) One or more domestic entities may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and

(2) Two or more foreign entities may merge into a domestic entity.

(b) Except as otherwise provided in this section, by complying with the provisions of this subchapter applicable to foreign entities a foreign entity may be a party to a merger under this subchapter or may be the surviving entity in such merger if the merger is authorized by the law of the foreign entity’s jurisdiction of formation.

(c) This subchapter shall not apply to a transaction under:

(1) Subchapter IX of Chapter 3 of this title;

(2) Subchapter IX of Chapter 4 of this title;

(3) Section 29-512;

(4) Subchapter IX of Chapter 6 of this title;

(5) Subchapter X of Chapter 7 of this title;

(6) Subchapter IX of Chapter 8 of this title;

(7) Subchapter XV Chapter 10 of this title;

(8) Section 29-1126; or

(9) Subchapter VII of Chapter 12 of this title.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(4), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “formation” for “organization” in (b); and substituted “Subchapter VII” for “Subchapter XII” in (c)(9).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-202.02. Plan of merger.

(a) A domestic entity may become a party to a merger under this subchapter by approving a plan of merger. The plan shall be in a record and contain:

(1) As to each merging entity, its name, jurisdiction of formation, and type;

(2) If the surviving entity is to be created in the merger, a statement to that effect and its name, jurisdiction of formation, and type;

(3) The manner of converting the interests in each party to the merger into interests, securities, obligations, rights to acquire interests or securities, money, or other property, or any combination of the foregoing;

(4) If the surviving entity exists before the merger, any proposed amendments to its public organic record or to its private organic rules that are, or are proposed to be, in a record;

(5) If the surviving entity is to be created in the merger, its proposed public organic record, if any, and the full text of its private organic rules that are proposed to be in a record;

(6) The other terms and conditions of the merger; and

(7) Any other provision required by the law of a merging entity’s jurisdiction of formation or the organic rules of a merging entity.

(b) A plan of merger may contain any other provision not prohibited by law.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(6), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “formation” for “organization” in (a)(1), (a)(2), and (a)(7); substituted “money” for “cash” in (a)(3) and substituted “record” for “document” in (a)(4) and (a)(5).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Section 2(b)(4)(B) of D.C. Law 19-210 purported to amend § 29-202.02(c). Because this section does not have a subsection (c), the amendment could not be implemented.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-202.03. Approval of merger.

(a) A plan of merger shall not be effective unless it has been approved:

(1) By a domestic merging entity:

(A) In accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) In the case of an entity that is not a business corporation, a merger; or

(ii) In the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation; or

(B) If its organic law or organic rules do not provide for approval of a

merger described in subparagraph (A)(ii) of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) In a record, by each interest holder of a domestic merging entity that will have interest holder liability for debts, obligations, and other liabilities that arise after the merger becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) The organic rules of the entity provide in a record for the approval of an merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of less than all of the interest holders; and

(B) The interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A merger under this chapter involving a foreign merging is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(7), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “debts, obligations, and other liabilities” for “liabilities” in (a)(2); and in (b), added “under this chapter” following “merger”, and substituted “is not effective” for “shall not be effective”, and “formation” for “organization.”

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-202.04. Amendment or abandonment of plan of merger.

(a) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan. A domestic merging entity may approve an amendment of a plan of merger:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) By the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the merger shall be entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, money, or other property, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(B) The public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned:

(1) As provided in the plan; or

(2) Unless prohibited by the plan, by a domestic merging entity in the same manner as the plan was approved.

(c) If a plan of merger is abandoned after a statement of merger has been delivered to the Mayor for filing and before the statement of merger becomes effective, a statement of abandonment, signed by a party to the plan, shall be delivered to the Mayor for filing before the time the statement of merger becomes effective. The statement of abandonment shall be effective upon filing by the Mayor, and the merger shall be abandoned and shall not become effective. The statement of abandonment shall contain:

(1) The name of each party to the plan of merger;

(2) The date on which the statement of merger was filed; and

(3) A statement that the merger has been abandoned in accordance with this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(8), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-202.05. Statement of merger; effective date.

(a) A statement of merger shall be signed on behalf of each merging entity and delivered to the Mayor for filing.

(b) A statement of merger shall contain:

(1) The name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;

(2) The name, jurisdiction of formation, and type of entity of the surviving entity;

(3) If the statement of merger is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) A statement that the merger was approved by each domestic merging entity, if any, in accordance with this subchapter and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;

(5) If the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;

(6) If the surviving entity is created by the merger and is a domestic filing entity, its public organic document as an attachment;

(7) If the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification as an attachment; and

(8) If the surviving entity is a foreign entity that is not a registered foreign

entity, a mailing address to which process may be served pursuant to § 29-202.06(e).

(c) In addition to the requirements of subsection (b) of this section, a statement of merger may contain any other provision not prohibited by law.

(d) If the surviving entity is a domestic entity, its public organic record, if any, shall satisfy the requirements of the law of the District, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of merger that is signed on behalf of all of the merging entities and meets all of the requirements of subsection (b) of this section may be delivered to the Mayor for filing instead of a statement of merger and, upon filing by the Mayor, shall have the same effect. If a plan of merger is filed as provided in this subsection, references in this chapter to a statement of merger refer to the plan of merger filed under this subsection.

(f) A statement of merger shall be effective upon the date and time of filing or the later date and time specified in the statement of merger.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(9), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “delivered to the Mayor for filing” for “filed with the Mayor” in (a) and (e); substituted “formation” for “organization” and “and type of entity” for “type” throughout (b); substituted “record” for “document” in (b)(5) and throughout (d);

substituted “registered” for “qualified” in (b)(8); and added “by the Mayor” after “filing” in (e).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-202.06. Effect of merger.

(a) When a merger under this chapter becomes effective:

(1) The surviving entity shall continue or come into existence;

(2) Each merging entity that is not the surviving entity shall cease to exist;

(3) All property of each merging entity shall vest in the surviving entity without transfer, reversion, or impairment;

(4) All debts, obligations, and other liabilities of each merging entity shall be the debts, obligations, and other liabilities of the surviving entity;

(5) Except as otherwise provided in law other than this chapter or the plan of merger, all of the rights, privileges, immunities, powers, and purposes of each merging entity shall vest in the surviving entity;

(6) If the surviving entity exists before the merger:

(A) All of its property shall continue to be vested in it without transfer, reversion or impairment;

(B) It shall remain subject to all of its debts, obligations, and other liabilities; and

(C) All of its rights, privileges, immunities, powers, and purposes shall continue to be vested in it;

(7) The name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(8) If the surviving entity exists before the merger:

(A) Its public organic record, if any, shall be amended as provided in the statement of merger and is effective; and

(B) Its private organic rules that are to be in a record, if any, shall be amended to the extent provided in the plan of merger and are binding on and enforceable by:

(i) Its interest holders; and

(ii) In the case of a surviving entity that is not a business corporation or a nonprofit corporation, any other person that is a party to an agreement that is part of the surviving entity's private organic rules;

(9) If the surviving entity is created by the merger:

(A) Its public record document, if any, shall be effective and shall be binding on its interest holders; and

(B) Its private organic rules shall be effective and shall be binding on and enforceable by:

(i) Its interest holders; and

(ii) In the case of a surviving entity that is not a business corporation or a nonprofit corporation, any other person that was a party to an agreement that was part of the organic rules of a merging entity if that person has agreed to be a party to an agreement that is part of the surviving entity's private organic rules; and

(10) The interests in each merging entity that are to be converted in the merger shall be converted, and the interest holders of those interests shall be entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under § 29-201.09 and the merging entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of a merging entity, a merger under this chapter does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the merging entity.

(c) When a merger under this chapter becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and that becomes subject to interest holder liability with respect to a domestic entity as a result of a merger has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the merger becomes effective.

(d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability shall be as follows:

(1) The merger shall not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective;

(2) The person shall have [sic] not have interest holder liability under the organic law of the domestic merging entity for any liability that arises after the merger becomes effective;

(3) The organic law of the domestic merging entity shall continue to apply to the release, collection, or discharge of any interest holder liability preserved

under paragraph (1) of this subsection as if the merger had not occurred and the surviving entity were the domestic merging entity; and

(4) The person shall have whatever rights of contribution from any other person as are provided by law other than this title or the organic rules of the domestic merging entity with respect to any interest holder liability preserved under paragraph (1) of this subsection as if the merger had not occurred.

(e) When a merger under this chapter becomes effective, a foreign entity that is the surviving entity may be served with process in the District for the collection and enforcement of any liabilities of a domestic merging entity in the manner provided in § 29-104.12.

(f) When a merger under this chapter becomes effective, the registration to do business in the District of any foreign merging entity that is not the surviving entity is canceled.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(10), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter III. Interest Exchange.

§ 29-203.01. Interest exchange authorized.

(a) Except as otherwise provided in this section, by complying with this subchapter:

(1) A domestic entity may acquire all of one or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing; or

(2) All of one or more classes or series of interests of a domestic entity may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, money, or other property, or any combination of the foregoing.

(b) Except as otherwise provided in this section, by complying with the provisions of this subchapter applicable to foreign entities a foreign entity may be the acquiring or acquired entity in an interest exchange under this subchapter if the interest exchange is authorized by the law of the foreign entity's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity, but does not refer to an interest exchange, the provision shall apply to an interest exchange in which the domestic entity is the acquired entity as if the interest exchange were a merger until the provision is amended after the effective date of this chapter.

(d) This subchapter shall not apply to a transaction under:

(1) Subchapter IX of Chapter 3 of this title; or

(2) Section 29-609.05, to the extent inconsistent with that section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(11), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “money” for “cash” in (a)(2); and substituted “formation” for “organization” in (b).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-203.02. Plan of interest exchange.

(a) A domestic entity may be the acquired entity in an interest exchange under this subchapter by approving a plan of interest exchange. The plan shall be in a record and contain:

- (1) The name and type of entity of the acquired entity;
- (2) The name, jurisdiction of formation, and type of the acquiring entity;
- (3) The manner of converting the interests in the acquired entity into interests, securities, obligations, rights to acquire interests or securities, money, or other property, or any combination of the foregoing;
- (4) Any proposed amendments to the public organic record, if any, or private organic rules that are, or are proposed to be, in a record of the acquired entity;
- (5) The other terms and conditions of the interest exchange; and
- (6) Any other provision required by the law of the District or the organic rules of the acquired entity.

(b) A plan of interest exchange may contain any other provision not prohibited by law.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(12), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 inserted “of entity” following “type” in (a)(1); substituted “formation, and type” for “organization, and type” in (a)(2); substituted “money” for “cash” in (a)(3); and substituted “record, if any” for “document” in (a)(4).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-203.03. Approval of interest exchange.

(a) A plan of interest exchange shall not be effective unless it has been approved:

- (1) By a domestic acquired entity:
 - (A) In accordance with the requirements, if any, in its organic law and organic rules for approval of an interest exchange;
 - (B) Except as otherwise provided in subsection (d) of this section, if its organic law or organic rules do not provide for approval of an interest exchange in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) In the case of an entity that is not a business corporation, a merger, as if the interest exchange were a merger; or

(ii) In the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the interest exchange were that type of merger; or

(C) If its organic law or organic rules do not provide for approval of an interest exchange or a merger described in subparagraph (B)(ii) of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) In a record, by each interest holder of a domestic acquired entity that will have interest holder liability for liabilities that arise after the interest exchange becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) The organic rules of the entity provide in a record for the approval of an interest exchange or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of less than all of the interest holders; and

(B) The interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) An interest exchange involving a foreign acquired entity shall not be effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

(c) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity shall not be required to approve the interest exchange.

(d) A provision of the organic law of a domestic acquired entity that would permit a merger between the acquired entity and the acquiring entity to be approved without the vote or consent of the interest holders of the acquired entity because of the percentage of interests in the acquired entity held by the acquiring entity shall not apply to approval of an interest exchange under subsection (a)(1)(B) of this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(13), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “formation” for “organization” in (b).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-203.04. Amendment or abandonment of plan of interest exchange.

(a) A plan of interest exchange may be amended only with the consent of each party to the plan, except as otherwise provided in the plan. A domestic acquired entity may approve an amendment of a plan of interested exchange:

(1) In the same manner as the plan was approved if the plan does not provide for the manner in which it may be amended; or

(2) By the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the interest exchange shall be entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, money, or other property, or any combination of the foregoing, to be received by any of the interest holders of the acquired entity under the plan;

(B) The public organic record or private organic rules of the acquired entity that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the interest holders of the acquired entity under its organic law or organic rules; or

(C) Any other terms or conditions of the plan if the change would adversely affect the interest holder in any material respect.

(b) After a plan of interest exchange has been approved by a domestic acquired entity and before a statement of interest exchange becomes effective, the plan may be abandoned:

(1) As provided in the plan; or

(2) Unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the Mayor for filing and before the statement of interest exchange becomes effective, a statement of abandonment, signed by a party to the plan, shall be delivered to the Mayor for filing before the time the statement of interest exchange becomes effective. The statement of abandonment shall be effective upon filing by the Mayor, and the interest exchange shall be abandoned and shall not become effective. The statement of abandonment shall contain:

(1) The name of the acquired entity;

(2) The date on which the statement of interest exchange was filed; and

(3) A statement that the interest exchange has been abandoned in accordance with this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(14), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote (a) and (c).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-203.05. Statement of interest exchange; effective date.

(a) A statement of interest exchange shall be signed on behalf of a domestic acquired entity and delivered to the Mayor for filing.

(b) A statement of interest exchange shall contain:

(1) The name and type of the acquired entity;

(2) The name, jurisdiction of formation, and type of entity of the acquiring entity;

(3) If the statement of interest exchange is not to be effective upon filing, the later date and time on which it will become effective, which shall not be more than 90 days after the date of filing;

(4) A statement that the plan of interest exchange was approved by the acquired entity in accordance with this subchapter; and

(5) Any amendments to the acquired entity's public organic record approved as part of the plan of interest exchange.

(c) In addition to the requirements of subsection (b) of this section, a statement of interest exchange may contain any other provision not prohibited by law.

(d) A plan of interest exchange that is signed on behalf of a domestic acquired entity and meets all of the requirements of subsection (b) of this section may be delivered to the Mayor for filing instead of a statement of interest exchange and upon filing by the Mayor has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in this chapter to a statement of interest exchange shall refer to the plan of interest exchange filed under this subsection.

(e) A statement of interest exchange shall be effective upon the date and time of filing or the later date and time specified in the statement of interest exchange.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(15), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “delivered to the Mayor for filing” for “filed with the Mayor” in (a) and (d); substituted “formation, and type of entity” for “organization, and type” in (b)(2); substituted “record” for “document” in (b)(5); and added “by the Mayor” following “filing” in the second sentence of (d).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-203.06. Effect of interest exchange.

(a) When an interest exchange becomes effective:

(1) The interests in the acquired entity that are the subject of the interest exchange shall cease to exist or are converted or exchanged, and the interest holders of those interests shall be entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under § 29-201.09 and the acquired entity's organic law;

(2) The acquiring entity shall be the interest holder of the interests in the acquired entity stated in the plan of interest exchange to be acquired by the acquiring entity;

(3) The public organic record, if any, of the acquired entity shall be

amended as provided in the statement of interest exchange and shall be binding on its interest holders; and

(4) The private organic rules of the acquired entity that are to be in a record, if any, shall be amended to the extent provided in the plan of interest exchange and shall be binding on and enforceable by:

(A) Its interest holders; and

(B) In the case of an acquired entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the acquired entity's private organic rules.

(b) Except as otherwise provided in the organic law or organic rules of the acquired entity, the interest exchange shall not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the acquired entity.

(c) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to the acquired entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange shall have interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the interest exchange becomes effective.

(d) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired entity with respect to which the person had interest holder liability shall be as follows:

(1) The interest exchange shall not discharge any interest holder liability under the organic law of the domestic acquired entity to the extent the interest holder liability arose before the interest exchange became effective;

(2) The person shall not have interest holder liability under the organic law of the domestic acquired entity for any liability that arises after the interest exchange becomes effective;

(3) The organic law of the domestic acquired entity shall continue to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) of this subsection as if the interest exchange had not occurred; and

(4) The person has whatever rights of contribution from any other person as are provided by law other than this title or the organic rules of the domestic acquired entity with respect to any interest holder liability preserved under paragraph (1) of this subsection as if the interest exchange had not occurred.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(16), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “record” for “document” in (a)(3); and substi-

tuted “law other than this title or the” for “the organic law or” in (d)(4).

*Subchapter IV. Conversion.***§ 29-204.01. Conversion authorized.**

(a) Except as otherwise provided in this section, by complying with this subchapter, a domestic entity may become:

- (1) A domestic entity of a different type; or
- (2) A foreign entity of a different type if the conversion is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of this subchapter applicable to foreign entities, a foreign entity may become a domestic entity of a different type if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a conversion, the provision shall apply to a conversion of the entity as if the conversion were a merger until the provision is amended after the effective date of this chapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(17), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “formation” for “organization” in (b).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-204.02. Plan of conversion.

(a) A domestic entity may convert to a different type of entity under this subchapter by approving a plan of conversion. The plan shall be in a record and contain:

- (1) The name and type of the converting entity;
- (2) The name, jurisdiction of formation, and type of entity of the converted entity;
- (3) The manner of converting the interests in the converting entity into interests, securities, obligations, rights to acquire interests or securities, money, or other property, or any combination of the foregoing;
- (4) The proposed public organic record of the converted entity if it will be a filing entity;
- (5) The full text of the private organic rules of the converted entity that are proposed to be in a record;
- (6) The other terms and conditions of the conversion; and
- (7) Any other provision required by the law of the District or the organic rules of the converting entity.

(b) A plan of conversion may contain any other provision not prohibited by law.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(18), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “formation, and type of entity” for “organization and type” in (a)(2); substituted “money” for “cash” in (a)(3); and substituted “record” for “document” in (a)(4).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-204.03. Approval of conversion.

(a) A plan of conversion shall not be effective unless it has been approved:

(1) By a domestic converting entity:

(A) In accordance with the requirements, if any, in its organic rules for approval of a conversion;

(B) If its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) In the case of an entity that is not a business corporation, a merger, as if the conversion were a merger; or

(ii) In the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation as if the conversion were that type of merger; or

(C) If its organic law or organic rules do not provide for approval of a conversion or a merger described in subparagraph (B)(ii) of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) In a record, by each interest holder of a domestic converting entity that will have interest holder liability for liabilities that arise after the conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit corporation:

(A) The organic rules of the entity provide in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of less than all of the interest holders; and

(B) The interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A conversion of a foreign converting entity shall not be effective unless it is approved by the foreign entity in accordance with the law of the foreign entity’s jurisdiction of formation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(19), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “formation” for “organization” in (b).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-204.04. Amendment or abandonment of plan of conversion.

(a) A plan of conversion of a domestic converting entity may be amended:

(1) In the same manner as the plan was approved if the plan does not provide for the manner in which it may be amended; or

(2) By the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, money, or other property, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;

(B) The public organic record or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) Any other terms or conditions of the plan if the change would adversely affect the interest holder in any material respect.

(b) After a plan of conversion has been approved by a domestic converting entity and before a statement of conversion becomes effective, the plan may be abandoned:

(1) As provided in the plan; or

(2) Unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after a statement of conversion has been delivered to the Mayor for filing and before the statement of conversion becomes effective, a statement of abandonment, signed on behalf of the entity, shall be delivered to the Mayor for filing before the time the statement of conversion becomes effective. The statement of abandonment shall be effective upon filing by the Mayor, and the conversion shall be abandoned and shall not become effective. The statement of abandonment shall contain:

(1) The name of the converting entity;

(2) The date on which the statement of conversion was filed; and

(3) A statement that the conversion has been abandoned in accordance with this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(20), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “money” for “cash” in (a)(2)(A); substituted “record” for “document” in (a)(2)(B); and in (c), twice substituted “delivered to the Mayor for filing” for “filed with the Mayor”, substituted “the statement of conversion” for “the filing”,

and substituted “upon filing by the Mayor” for “upon filing.”

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-204.05. Statement of conversion; effective date.

(a) A statement of conversion shall be signed on behalf of the converting entity and delivered to the Mayor for filing.

(b) A statement of conversion shall contain:

(1) The name, jurisdiction of formation, and type of entity of the converting entity;

(2) The name, jurisdiction of formation, and type of entity of the converted entity;

(3) If the statement of conversion is not to be effective upon filing, the later date and time on which it will become effective, which shall not be more than 90 days after the date of filing;

(4) If the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with this subchapter or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of formation;

(5) If the converted entity is a domestic filing entity, the text of its public organic record as an attachment; and

(6) If the converted entity is a domestic limited liability partnership, the text of its statement of qualification as an attachment; and

(7) If the converted entity is a foreign entity that is not a registered foreign entity, a mailing address to which process may be served pursuant to § 29-204.06(e).

(c) In addition to the requirements of subsection (b) of this section, a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic record, if any, shall satisfy the requirements of the law of the District, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of conversion that is signed on behalf of a domestic converting entity and meets all of the requirements of subsection (b) of this section may be delivered to the Mayor for filing instead of a statement of conversion and, upon filing by the Mayor, shall have the same effect. If a plan of conversion is filed as provided in this subsection, references in this chapter to a statement of conversion shall refer to the plan of conversion filed under this subsection.

(f) A statement of conversion shall be effective upon the date and time of filing or the later date and time specified in the statement of conversion.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(21), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “delivered to the Mayor for filing” for “filed with the Mayor” in (a) and (e); substituted “formation, and type of entity” for “organization, and type” in (b)(1) and (b)(2); substituted “formation” for “organization” in (b)(4); substituted “record” for “document” in (b)(5) and through-

out (d); substituted “registered” for “qualified” in (b)(7); and substituted “upon filing with the Mayor” for “upon filing” in (e).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-204.06. Effect of conversion.

(a) When a conversion becomes effective:

(1) The converted entity shall be:

(A) Formed under and subject to the organic law of the converted entity; and

(B) The same entity without interruption as the converting entity;

(2) All property of the converting entity shall continue to be vested in the converted entity without transfer, reversion, or impairment;

(3) All liabilities of the converting entity shall continue as debts, obligations, or other liabilities of the converted entity;

(4) Except as otherwise provided by law other than this chapter or the plan of conversion, all of the rights, privileges, immunities, powers, and purposes of the converting entity shall remain in the converted entity;

(5) The name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) If a converted entity is a filing entity, its public organic record shall be effective and shall be binding on its interest holders;

(7) If the converted entity is a limited liability partnership, its statement of qualification shall be effective simultaneously;

(8) The private organic rules of the converted entity that are to be in a record, if any, approved as part of the plan of conversion shall be effective and shall be binding on and enforceable by:

(A) Its interest holders; and

(B) In the case of a converted entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the entity's private organic rules; and

(9) The interests in the converting entity shall be converted, and the interest holders of the converting entity shall be entitled only to the rights provided to them under the plan of conversion, and to any appraisal rights they have under § 29-201.09 and the converting entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the converting entity, the conversion shall not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of a conversion shall have interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the conversion becomes effective.

(d) When a conversion becomes effective:

(1) The conversion shall not discharge any interest holder liability under the organic law of a domestic converting entity to the extent the interest holder liability arose before the conversion became effective;

(2) A person shall not have interest holder liability under the organic law of a domestic converting entity for any liability that arises after the conversion becomes effective;

(3) The organic law of a domestic converting entity shall continue to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) of this subsection as if the conversion had not occurred; and

(4) A person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic converting entity with respect to any interest holder liability preserved under paragraph (1) of this subsection as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in the District for the collection and enforcement of any of its liabilities in the manner provided in § 29-104.12.

(f) If the converting entity is a registered foreign entity, the certificate of registration or other foreign qualification of the converting entity shall be canceled when the conversion becomes effective.

(g) A conversion shall not require the entity to wind up its affairs and shall not constitute or cause the dissolution of the entity.

(h) When a conversion becomes effective, the following rules apply:

(1) Subject to paragraph (3) of this subsection, the recordation tax imposed by section 303 of the District of Columbia Deed Recordation Tax Act, approved March 2, 1962 (76 Stat. 12; D.C. Official Code § 42-1103), or the transfer tax imposed by § 47-903, shall not be imposed, in connection with the conversion of a converting entity to a converted entity, upon the following:

(A) The filing of the public organic document of the converted entity;

(B) The recordation of a deed reflecting that the converted entity has become the legal title holder; or

(C) The transfer of title or other interest in real property from the converting entity to the converted entity.

(2) The tax exemptions enumerated in paragraph (1) of this subsection shall only be applicable if:

(A) The interest holders of the converted entity are identical to the interest holders of the converting entity;

(B) Each interest holder's allocation of the profits and losses of the converted entity is identical to the interest holder's allocation of the profits and losses of the converting entity; and

(C) There is no change in the interest holders of the converted entity or in the allocation to any interest holder in the profits and losses of the converted entity during the 12-month period following the effective date of the conversion, other than by reason of the death of an interest holder or the involuntary dissolution of the converted entity.

(3) The tax exemptions enumerated in paragraph (1) of this subsection shall be effective regardless of whether the deed or transfer to the converted entity is from nominees or trustees for the converting entity or from the converting entity itself.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(22), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Formed” for “Organized” in (a)(1)(A); substituted “transfer” for “assignment” in (a)(2); substituted “continue as debts, obligations, or other liabilities” for “continue as liabilities” in (a)(3); substituted “record” for “document” in

(a)(6); substituted “registered” for “qualified” in (f); and added (h).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter V. Domestication.

§ 29-205.01. Domestication authorized.

(a) Except as otherwise provided in this section, by complying with this subchapter, a domestic entity may become a domestic entity of the same type in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of this subchapter applicable to foreign entities, a foreign entity may become a domestic entity of the same type in the District if the domestication is authorized by the law of the foreign entity’s jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a domestication, the provision shall apply to a domestication of the entity as if the domestication were a merger until the provision is amended after the effective date of this chapter.

(d) This subchapter does not apply to the domestication of the following entities:

(1) A business corporation subject to subchapter VII of Chapter 3 of this title;

(2) A nonprofit corporation subject to subchapter VII of Chapter 4 of this title; or

(3) A limited liability company subject to subchapter IX of Chapter 8 of this title.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(23), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “formation” for “organization” in (b); repealed former (c), which read: “When the term ‘domestic entity’ is used in this subchapter with reference to a foreign jurisdiction, it means an entity whose internal affairs are governed by the law of the foreign jurisdiction.”; redesignated former (d) and (e) as present (c) and (d), respectively; and substituted

“This subchapter does not apply to the domestication of the following entities” for “The following entities shall not engage in a domestication under this subchapter” in the introductory language of (d).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-205.02. Plan of domestication.

(a) A domestic entity may become a foreign entity in a domestication by approving a plan of domestication. The plan shall be in a record and contain:

(1) The name and type of the domesticating entity;

- (2) The name and jurisdiction of formation of the domesticated entity;
 - (3) The manner of converting the interests in the domesticating entity into interests, securities, obligations, rights to acquire interests or securities, money, or other property, or any combination of the foregoing;
 - (4) The proposed public organic record of the domesticated entity if it is a filing entity;
 - (5) The full text of the private organic rules of the domesticated entity that are proposed to be in a record;
 - (6) The other terms and conditions of the domestication; and
 - (7) Any other provision required by the law of the District or the organic rules of the domesticating entity.
- (b) A plan of domestication may contain any other provision not prohibited by law.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(24), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “formation” for “organization” in (a)(2); substituted “money” for “cash” in (a)(3); and substituted “record” for “document” in (a)(4).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-205.03. Approval of domestication.

- (a) A plan of domestication shall not be effective unless it has been approved:
- (1) By a domestic domesticating entity:
 - (A) In accordance with the requirements, if any, in its organic rules for approval of a domestication;
 - (B) If its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, in its organic law and organic rules for approval of:
 - (i) In the case of an entity that is not a business corporation, a merger as if the domestication were a merger; or
 - (ii) In the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation as if the domestication were that type of merger; or
 - (C) If its organic law or organic rules do not provide for approval of a domestication or a merger described in subparagraph (B)(ii) of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and
 - (2) In a record, by each interest holder of a domestic domesticating entity that will have interest holder liability for liabilities that arise after the domestication becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:
 - (A) The organic rules of the entity in a record provide for the approval of a domestication or merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of less than all of the interest holders; and

(B) The interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A domestication of a foreign domesticating entity shall not be effective unless it is approved in accordance with the law of the foreign entity's jurisdiction of formation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(25), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "formation" for "organization" in (b).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-205.04. Amendment or abandonment of plan of domestication.

(a) A plan of domestication of a domestic domesticating entity may be amended:

(1) In the same manner as the plan was approved if the plan does not provide for the manner in which it may be amended; or

(2) By the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the domestication shall be entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, money, or other property, or any combination of the foregoing, to be received by any of the interest holders of the domesticating entity under the plan;

(B) The public organic record or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules; or

(C) Any other terms or conditions of the plan if the change would adversely affect the interest holder in any material respect.

(b) After a plan of domestication has been approved by a domestic domesticating entity and before a statement of domestication becomes effective, the plan may be abandoned:

(1) As provided in the plan; or

(2) Unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of domestication is abandoned after a statement of domestication has been delivered to the Mayor for filing and before the statement of domestication becomes effective, a statement of abandonment, signed on behalf of the entity, shall be delivered to the Mayor for filing before the time the statement of domestication becomes effective. The statement of abandonment shall be effective upon filing by the Mayor, and the domestication shall be

abandoned and shall not become effective. The statement of abandonment shall contain:

- (1) The name of the domesticating entity;
- (2) The date on which the statement of domestication was filed; and
- (3) A statement that the domestication has been abandoned in accordance with this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(26), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “money” for “cash” in (a)(2)(A); substituted “record” for “document” in (a)(2)(B); and in (c), twice substituted “delivered to the Mayor for filing” for “filed with the Mayor”, substituted “the statement of domestication” for “the filing”,

and added “by the Mayor” following “upon filing” in (c).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-205.05. Statement of domestication; effective date.

(a) A statement of domestication shall be signed on behalf of the domesticating entity and delivered to the Mayor for filing.

(b) A statement of domestication shall contain:

(1) The name, jurisdiction of formation, and type of the domesticating entity;

(2) The name and jurisdiction of formation of the domesticated entity;

(3) If the statement of domestication is not to be effective upon filing, the later date and time on which it will become effective, which shall not be more than 90 days after the date of filing;

(4) If the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with this subchapter or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;

(5) If the domesticated entity is a domestic filing entity, its public organic record as an attachment; and

(6) If the domesticated entity is a domestic limited liability partnership, its statement of qualification as an attachment; and

(7) If the domesticated entity is a foreign entity that is not a registered foreign entity, a mailing address to which the process may be served pursuant to § 29-205.06(e).

(c) In addition to the requirements of subsection (b) of this section, a statement of domestication may contain any other provision not prohibited by law.

(d) If the domesticated entity is a domestic entity, its public organic record, if any, shall satisfy the requirements of the law of the District, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of domestication that is signed on behalf of a domesticating domestic entity and meets all of the requirements of subsection (b) of this section may be delivered to the Mayor for filing instead of a statement of

domestication and, upon filing by the Mayor, shall have the same effect. If a plan of domestication is filed as provided in this subsection, references in this chapter to a statement of domestication shall refer to the plan of domestication filed under this subsection.

(f) A statement of domestication shall be effective upon the date and time of filing or the later date and time specified in the statement of domestication.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(27), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “delivered to the Mayor for filing” for “filed with the Mayor” in (a) and (e); substituted “formation, and type” for “organization, and type” in (b)(1); substituted “formation” for “organization” in (b)(2) and (4); substituted “record” for “document” in (b)(5) and throughout (d); substi-

tuted “registered” for “qualified” in (b)(7); and substituted “upon filing by the Mayor” for “upon filing” in (e).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-205.06. Effect of domestication.

(a) When a domestication becomes effective:

(1) The domesticated entity shall be:

(A) Organized under and subject to the organic law of the domesticated entity; and

(B) The same entity without interruption as the domesticating entity;

(2) All property of the domesticating entity shall continue to be vested in the domesticated entity without transfer, reversion, or impairment;

(3) All liabilities of the domesticating entity shall continue as liabilities of the domesticated entity;

(4) Except as otherwise provided by law other than this chapter or the plan of domestication, all of the rights, privileges, immunities, powers, and purposes of the domesticating entity shall remain in the domesticated entity;

(5) The name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(6) If the domesticated entity is a filing entity, its public organic record shall be effective and shall be binding on its interest holders;

(7) If the domesticated entity is a limited liability partnership, its statement of qualification shall be effective simultaneously;

(8) The private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication shall be effective and shall be binding on and enforceable by:

(A) Its interest holders; and

(B) In the case of a domesticated entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the domesticated entity’s private organic rules; and

(9) The interests in the domesticating entity shall be converted to the extent and as approved in connection with the domestication, and the interest holders of the domesticating entity shall be entitled only to the rights provided to them under the plan of domestication, and to any appraisal rights they have under § 29-201.09 and the domesticating entity’s organic law.

(b) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication shall not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the domesticating entity.

(c) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the domestication shall have interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the domestication becomes effective.

(d) When a domestication becomes effective:

(1) The domestication shall not discharge any interest holder liability under the organic law of a domesticating domestic entity to the extent the interest holder liability arose before the domestication became effective;

(2) A person shall not have interest holder liability under the organic law of a domestic domesticating entity for any liability that arises after the domestication becomes effective;

(3) The organic law of a domestic domesticating entity shall continue to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) of this subsection as if the domestication had not occurred; and

(4) A person shall have whatever rights of contribution from any other person as are provided by the organic law or organic rules of a domestic domesticating entity with respect to any interest holder liability preserved under paragraph (1) of this subsection as if the domestication had not occurred.

(e) When a domestication becomes effective, a foreign entity that is the domesticated entity may be served with process in the District for the collection and enforcement of any of its liabilities in the manner provided in § 29-104.12.

(f) If the domesticating entity is a registered foreign entity, the certificate of registration or other foreign qualification of the domesticating entity shall be canceled when the domestication becomes effective.

(g) A domestication shall not require the entity to wind up its affairs and shall not constitute or cause the dissolution of the entity.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(b)(28), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “transfer” for “assignment” in (a)(2); substituted “record” for “document” in (a)(6); and substituted “registered” for “qualified” in (f).

Legislative history of Law 19-210. — See note to § 29-201.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

BUSINESS CORPORATIONS

CHAPTER 3. BUSINESS CORPORATIONS.

Subchapter I. General Provisions

Part A

Short Title, Definition, Notice, Extrinsic Facts

Sec.

29-301.03. Notice and other communications.

29-301.04. Reference to extrinsic facts in plans or filed documents.

Subchapter III. Purposes and Powers

29-303.02. General powers.

Subchapter IV. Shares and Distributions

Part A

Shares

29-304.01. Authorized shares.

Part B

Issuance of Shares

29-304.21. Issuance of shares.

Subchapter V. Shareholders

Part A

Meetings

29-305.04. Action without meeting.

29-305.05. Notice of meeting.

29-305.06. Waiver of notice.

29-305.09. Remote participation in annual and special meetings.

Part B

Voting

29-305.20. Shareholders' list for meeting.

29-305.22. Proxies.

29-305.24. Corporation's acceptance of votes.

Part C

Voting Trusts and Agreements

29-305.42. Shareholder agreements.

Part D

Derivative Proceedings

29-305.52. Demand.

Part E

Proceeding to Appoint Custodian or Receiver

29-305.70. Shareholder action to appoint custodian or receiver.

Subchapter VI. Directors and Officers

Part A

Board of Directors

Sec.

29-306.01. Requirement for and functions of board of directors.

Part B

Meetings and Action of the Board

29-306.21. Action without meeting.

Part C

Directors

29-306.31. Standards of liability for directors.

Part E

Indemnification and Advance for Expenses

29-306.53. Advance for expenses.

Subchapter VII. Domestication

29-307.01. Domestication.

29-307.06. Abandonment of a domestication.

Subchapter IX. Merger and Share Exchanges

29-309.02. Merger.

29-309.06. Articles of merger or share exchange.

29-309.08. Abandonment of a merger or share exchange.

Subchapter XI. Appraisal Rights

Part B

Procedure for Exercise of Appraisal Rights

29-311.10. Notice of appraisal rights.

29-311.11. Notice of intent to demand payment and consequences of voting or consenting.

29-311.12. Appraisal notice and form.

Subchapter XII. Dissolution

Part A

Voluntary Dissolution

29-312.05. Effect of dissolution.

29-312.08. Court proceedings.

Part B

Judicial Dissolution

29-312.20. Grounds for judicial dissolution.

29-312.22. Receivership or custodianship.

29-312.23. Decree of dissolution.

<i>Subchapter XIII. Records and Reports</i>		<i>Subchapter XIV. Transition Provisions</i>	
Part A		Sec.	
Records		29-314.01.	Application to existing domestic corporations.
Sec.	29-313.02. Inspection of records by shareholders.	29-314.02.	Application to registered foreign corporations.
Part B			
Reports			
29-313.07. Financial statements for shareholders.			

Subchapter I. General Provisions.

PART A.

SHORT TITLE, DEFINITIONS, AND NOTICE.

§ 29-301.03. Notice and other communications.

- (a) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under this chapter must be in English.
- (b) A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions must be sent in accordance with this section. If these methods of communication are impracticable, a notice or other communication may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.
- (c) Notice or other communication to a domestic or a registered foreign corporation may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of registration.
- (d) Notice or other communications may be delivered by electronic transmission if:
- (1) The recipient consents or if authorized by subsection (k) of this section;
 - (2) The electronic transmission contains or is accompanied by information from which the recipient can determine the date of the transmission; and
 - (3) The transmission was authorized by the sender.
- (e) Consent under subsection (d) of this section may be revoked by giving written or electronic notice to the original recipient of the consent. Any such consent is deemed revoked if:
- (1) Two consecutive electronic transmissions are undeliverable; and
 - (2) The secretary, assistant secretary, transfer agent, or other person responsible for the provision of notice or other communications knows of the

delivery failure. Any inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(f) Unless otherwise agreed between sender and recipient, an electronic transmission is considered received when:

(1) It enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and

(2) It is in a form capable of being processed by that system.

(g) Receipt of an electronic acknowledgment from an information processing system described in subsection (f) (1) of this section establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(h) An electronic transmission is considered received under this section even if no individual is aware of its receipt.

(i) Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(1) If in physical form, when it is left at:

(A) A shareholder's address shown on the corporation's record of shareholders maintained by the corporation under § 29-313.01(c);

(B) A director's residence or usual place of business; or

(C) The corporation's principal place of business;

(2) If mailed postage prepaid and correctly addressed to a shareholder upon deposit in the United States mail;

(3) If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of the following:

(A) If sent by registered or certified mail, return receipt requested, the date the return receipt is signed by or on behalf of the addressee; or

(B) 5 days after it is deposited in the United States mail;

(4) If an electronic transmission, when it is received as provided in subsection (f) of this section; and

(5) If oral, when communicated.

(j) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(1) The electronic transmission is otherwise retrievable in perceivable form; and

(2) The sender and the recipient have consented in writing to the use of such form of electronic transmission.

(k) If this title prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of this title, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(2), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — Law 19-210, the “District of Columbia Official Code Title 29 Technical and Harmonizing Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-532. The Bill was adopted on first and second readings on July

10, 2012, and Oct. 2, 2012, respectively. Signed by the Mayor on Oct. 31, 2012, it was assigned Act No. 19-512 and transmitted to Congress for its review. D.C. Law 19-210 became effective on Mar. 5, 2013.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-301.04. Reference to extrinsic facts in plans or filed documents.

(a) For the purposes of this subsection, the term:

(1) “Filed document” means a document delivered to the Mayor for filing under any provision of this chapter except § 29-102.11.

(2) “Plan” means a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange.

(b) Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

(2) The facts may include:

(A) Any of the following that is available in a nationally recognized news or information medium, either in print or electronically:

- (i) Statistical or market indices;
- (ii) Market prices of any security or group of securities;
- (iii) Interest rates;
- (iv) Currency exchange rates; or
- (v) Similar economic or financial data;

(B) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(C) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(3) The following provisions of a plan or filed document shall not be made dependent on facts outside the plan or filed document:

(A) The name and address of any person required in a filed document;

(B) The registered agent of any entity required in a filed document;

(C) The number of authorized shares and designation of each class or series of shares;

(D) The effective date of a filed document; or

(E) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(4) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable

by reference to a source described in paragraph (2)(A) of this subsection or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, the corporation shall file with the Mayor articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this paragraph shall be deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(3), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “delivered to the Mayor for filing” for “filed with the Mayor” in (a)(1).

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Legislative history of Law 19-210. — See note to § 29-301.03.

Subchapter III. Purposes and Powers.

§ 29-303.02. General powers.

Unless its articles of incorporation provide otherwise, every corporation shall have perpetual duration and succession in its corporate name and shall have the same powers as an individual to do all things necessary or convenient to carry out its activities and affairs, including power to:

- (1) Sue and be sued, and defend in its corporate name;
- (2) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the District, for managing the business and regulating the affairs of the corporation;
- (4) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, property, or any legal or equitable interest in property, wherever located;
- (5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) Purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (8) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) Conduct its business, locate offices, and exercise the powers granted by this chapter within or without the District;

(11) Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) Do any lawful business that will aid governmental policy; and

(15) Make payments or donations, or do any other act, not inconsistent with law, that furthers the activities and affairs of the corporation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(4), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities” for “business” in the introductory language and in (15); and deleted “real or personal” preceding the first appearance of “property” in (4).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter IV. Shares and Distributions.

PART A.

SHARES.

§ 29-304.01. Authorized shares.

(a) The articles of incorporation shall set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class or series and shall describe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights, and limitations, of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights, and limitations, that are identical with those of other shares of the same class or series.

(b) The articles of incorporation shall authorize:

(1) One or more classes or series of shares that together have unlimited voting rights; and

(2) One or more classes or series of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one or more classes or series of shares that:

(1) Have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided by this chapter;

(2) Are redeemable or convertible as specified in the articles of incorporation:

(A) At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event;

(B) For money, indebtedness, securities, or other property; and

(C) At prices and in amounts:

(i) Specified; or

(ii) Determined in accordance with a formula;

(3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(4) Have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation.

(d) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with § 29-301.04.

(e) Any of the terms of shares may vary among holders of the same class or series so long as the variations are expressly set forth in the articles of incorporation.

(f) The description of the preferences, rights, and limitations of classes or series of shares in subsection (c) of this section is not exhaustive.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(5), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “money” for “cash” in (c)(2)(B).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

PART B.

ISSUANCE OF SHARES.

§ 29-304.21. Issuance of shares.

(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including money, promissory notes, services performed, contracts for services to be performed, and other securities of the corporation.

(c) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors shall be conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor shall be fully paid and nonassessable.

(e) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(f) An issuance of shares or other securities convertible into or rights exercisable for shares, in a transaction or a series of integrated transactions, shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the matter exists, if:

(1) The shares, other securities, or rights are issued for consideration other than money or money equivalents, and

(2) The voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than 20% of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(g) For the purposes of this subsection:

(1) For the purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares is the greater of:

(A) The voting power of the shares to be issued; or

(B) The voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.

(2) A series of transactions is integrated if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(6), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “money” for “cash” in (b) and twice in (f).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter V. Shareholders.

PART A.

MEETINGS.

§ 29-305.04. Action without meeting.

(a) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action shall be evidenced by one or more consents in a record bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) The articles of incorporation may provide that any action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in a record setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The consent in a record shall bear the date of signature of the shareholder that signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(c) If not otherwise fixed under § 29-305.07 and if prior board action is not required with respect to the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed consent in a record is delivered to the corporation. If not otherwise fixed under § 29-305.07 and if prior board action is required with respect to the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No consent in a record is effective to take the corporate action referred to therein unless, within 60 days of the earliest date on which a consent delivered to the corporation as required by this section was signed, consents in a record signed by sufficient shareholders to take the action have been delivered to the corporation. A consent in a record may be revoked by a record to that effect delivered to the corporation before unrevoked consents in a record sufficient in number to take the corporate action are delivered to the corporation.

(d) A consent signed pursuant to this section shall have the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of consents in a record, the action taken by consent in a record shall be effective when consents in a record signed by sufficient shareholders to take the action are delivered to the corporation.

(e)(1) If this chapter requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by consent in a record of the voting shareholders, the corporation shall give its nonvoting shareholders notice in a record of the action not more than 10 days after:

(A) Consents in a record sufficient to take the action have been delivered to the corporation; or

(B) Such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section.

(2) The notice under paragraph (1) of this subsection shall reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this chapter, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f)(1) If action is taken by less than unanimous consent in a record of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not more than 10 days after:

(A) Consents in a record sufficient to take the action have been delivered to the corporation; or

(B) Such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section.

(2) The notice under paragraph (1) of this subsection shall reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this chapter, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) shall not delay the effectiveness of actions taken by consent in a record and a failure to comply with such notice requirements shall not invalidate actions taken by consent in a record; provided, that this subsection shall not limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give the notice within the required time period.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(7), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-305.05. Notice of meeting.

(a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no less than 10, or more than, 60 days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to § 29-305.09 for any class or series of shareholders, the notice to such class or series of shareholders shall describe the means of remote communication to be used.

Unless this chapter or the articles of incorporation require otherwise, the corporation shall give notice only to shareholders entitled to vote at the meeting.

(b) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under § 29-305.03 or [§] 29-305.07, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting shall be the day before the 1st notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment; provided, that if a new record date for the adjourned meeting is or must be fixed under § 29-305.07, notice of the adjourned meeting shall be given under this section to persons that are shareholders as of the new record date.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(8), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added the second sentence in (a).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-305.06. Waiver of notice.

(a) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver shall be in a record, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting waives object to:

(1) Lack of notice or defective notice of the meeting, unless the shareholder, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(2) Consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(9), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "in a record" for "in writing" in (a).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor's notes. — Application of Law 19-

210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-305.09. Remote participation in annual and special meetings.

(a) Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts, and shall be in conformity with subsection (b) of this section.

(b) Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures:

- (1) To verify that each person participating remotely is a shareholder; and
- (2) To provide such shareholders a reasonable opportunity to participate in the meeting and to vote, including the opportunity to communicate with other shareholders participating in the meeting and to read or hear the proceedings of the meeting as the meeting is taking place.

(Mar. 5, 2013, D.C. Law 19-210, § 2(c)(10), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-301.03. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

PART B.

VOTING.

§ 29-305.20. Shareholders' list for meeting.

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders that are entitled to notice of a shareholders' meeting. The list shall:

(1) Be arranged by voting group and, within each voting group, by class or series; and

(2) Show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder, beginning 2 business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, or the shareholder's agent or attorney, shall be entitled on demand in record to inspect and, subject to § 29-313.02(c), to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the

meeting and any shareholder, or the shareholder's agent or attorney, shall be entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, or the shareholder's agent or attorney, to inspect the shareholders' list before or at the meeting, or copy the list as permitted by subsection (b) of this section, the Superior Court, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list shall not affect the validity of action taken at the meeting.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(11), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “demand in record” for “written demand” in (b).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-305.22. Proxies.

(a) A shareholder may vote the shareholder's shares in person or by proxy.

(b) An appointment of a proxy shall be effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

(c) An appointment of a proxy shall be revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest shall include the appointment of:

- (1) A pledgee;
- (2) A person that purchased or agreed to purchase the shares;
- (3) A creditor of the corporation that extended it credit under terms requiring the appointment;
- (4) An employee of the corporation whose employment contract requires the appointment; or
- (5) A party to a voting agreement created under § 29-305.41.

(d) The death or incapacity of the shareholder appointing a proxy shall not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) An appointment made irrevocable under subsection (d) of this section shall be revoked when the interest with which it is coupled is extinguished.

(f) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment

was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(g) Subject to § 29-305.24 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation shall be entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(12), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 repealed former (b), which read: "A shareholder, or the shareholder's agent or attorney-in-fact, may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission shall contain or be accompanied by information from which one can determine

that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the transmission."; and redesignated (c) through (h) as (b) through (g), respectively.

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-305.24. Corporation's acceptance of votes.

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, shall be entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith may nevertheless accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(1) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(3) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(4) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(5) Two or more persons are the shareholder as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation may reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in

good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or § 29-301.03(d) shall not be liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section shall be valid unless the Superior Court determines otherwise.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(13), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “§ 29-301.03(d)” for “§ 29-305.22(b)” in (d).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

PART C.

VOTING TRUSTS AND AGREEMENTS.

§ 29-305.42. Shareholder agreements.

(a) An agreement among the shareholders of a corporation that complies with this section shall be effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

(1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in § 29-304.60;

(3) Establishes who will be directors or officers of the corporation, their terms of office, or manner of their selection or removal;

(4) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(6) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the activities and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(7) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(8) Otherwise governs the exercise of the corporate powers or the management of the activities and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

(1) Set forth in:

(A) The articles of incorporation or bylaws and approved by all persons that are shareholders at the time of the agreement; or

(B) A written agreement that is signed by all persons that are shareholders at the time of the agreement and is made known to the corporation;

(2) Subject to amendment only by all persons that are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(3) Valid for 10 years, unless the agreement provides otherwise.

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by § 29-304.26(b). If, at the time of the agreement, the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares that, at the time of purchase, did not have knowledge of the existence of the agreement may rescind the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection shall be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(d) An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors relieves the directors of, and imposes upon the person or persons in which the discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(14), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities” for “business” in (a)(6) and (a)(8).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

PART D.

DERIVATIVE PROCEEDINGS.

§ 29-305.52. Demand.

A shareholder shall not commence a derivative proceeding until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) Ninety days have expired from the date the delivery of the demand was made unless

(A) The shareholder has earlier been notified that the demand has been rejected by the corporation; or

(B) Irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(15), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “the delivery of the demand” for “the demand” in (2).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

PART E.

PROCEEDING TO APPOINT CUSTODIAN OR RECEIVER.

§ 29-305.70. Shareholder action to appoint custodian or receiver.

(a) The Superior Court may appoint one or more persons to be custodians or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder if it is established that:

(1) The directors are deadlocked in the management of the corporate

affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(2) The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(b) The Superior Court:

(1) May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;

(2) Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(3) Shall have jurisdiction over the corporation and all of its property, wherever located.

(c) The Superior Court may appoint an individual or domestic or foreign corporation, authorized to do business in the District, as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(d) The Superior Court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended. Among other powers:

(1) A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the activities and affairs of the corporation; and

(2) A receiver may:

(A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

(B) Sue and defend in the receiver's own name as receiver.

(e) The Superior Court during a custodianship may redesignate the custodian a receiver and, during a receivership, may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(f) The Superior Court, during the custodianship or receivership, may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(16), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities” for “business” in (d)(1).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VI. Directors and Officers.

PART A.

BOARD OF DIRECTORS.

§ 29-306.01. Requirement for and functions of board of directors.

(a) Except as otherwise provided in § 29-305.42, each corporation shall have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of the board of directors of the corporation and the activities and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under § 29-305.42.

(c) In the case of a public corporation, the board's oversight responsibilities shall include attention to:

- (1) Business performance and plans;
- (2) Major risks to which the corporation is or may be exposed;
- (3) The performance and compensation of senior officers;
- (4) Policies and practices to foster the corporation's compliance with law and ethical conduct;
- (5) Preparation of the corporation's financial statements;
- (6) The effectiveness of the corporation's internal controls;
- (7) Arrangements for providing adequate and timely information to directors; and
- (8) The composition of the board and its committees, taking into account the important role of independent directors.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(17), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities” for “business” in (b).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

PART B.

MEETINGS AND ACTION OF THE BOARD.

§ 29-306.21. Action without meeting.

(a) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken

without a meeting if each director signs a consent in a record describing the action to be taken and delivers it to the corporation.

(b) Action taken under this section shall be the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked consents in a record signed by all the directors.

(c) A consent signed under this section shall have the effect of action taken at a meeting of the board of directors and may be described as such in any document.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(18), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “consent in a record” for “consent” in (a); and substituted “consents in a record” for “written consents” in (b).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

PART C.

DIRECTORS.

§ 29-306.31. Standards of liability for directors.

(a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(1) None of the following, if interposed as a bar to the proceeding by the director, precludes liability:

(A) Any provision in the articles of incorporation authorized by § 29-302.02(b)(4);

(B) The protection afforded by § 29-306.71 for action taken in compliance with § 29-306.72 or § 29-306.73; or

(C) The protection afforded by § 29-306.80; and

(2) The challenged conduct consisted or was the result of:

(A) Action not in good faith;

(B) A decision:

(i) Which the director did not reasonably believe to be in the best interests of the corporation; or

(ii) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances;

(C) A lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:

(i) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(ii) After a reasonable expectation to such effect has been established, the director has not established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

(D) A sustained failure of the director to devote attention to ongoing oversight of the activities and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefore [therefor]; or

(E) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages, shall also have the burden of establishing that:

(A) Harm to the corporation or its shareholders has been suffered; and

(B) The harm suffered was proximately caused by the director's challenged conduct;

(2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) This section shall not:

(1) In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under § 29-306.71(b)(3), alter the burden of proving the fact or lack of fairness otherwise applicable;

(2) Alters the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under § 29-306.32 or a transactional interest under § 29-306.71; or

(3) Affects any rights to which the corporation or a shareholder may be entitled under another law of the District or the United States.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(19), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "activities" for "business" in (a)(2)(D).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

PART E.

INDEMNIFICATION AND ADVANCE FOR EXPENSES.

§ 29-306.53. **Advance for expenses.**

(a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation:

(1) A signed affirmation in a record of the director's good faith belief that the relevant standard of conduct described in § 29-306.51 has been met by the director or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by § 29-302.02(b)(4); and

(2) An undertaking in a record of the director to repay any funds advanced if the director is not entitled to mandatory indemnification under § 29-306.52 and it is ultimately determined under § 29-306.54 or § 29-306.55 that the director has not met the relevant standard of conduct described in § 29-306.51.

(b) The undertaking required by subsection (a)(2) of this section shall be an unlimited general obligation of the director, but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) The authorization under this section shall be made:

(1) By the board of directors:

(A) If there are 2 or more qualified directors, by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of 2 or more qualified directors appointed by such a vote; or

(B) If there are fewer than 2 qualified directors, by the vote necessary for action by the board in accordance with § 29-306.24(c), in which authorization directors who are not qualified directors may participate; or

(2) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director shall not be voted on the authorization.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(20), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “signed affirmation in a record” for “written affirmation” in (a)(1); and substituted “An undertaking in a record” for “A written undertaking” in (a)(2).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

*Subchapter VII. Domestication.***§ 29-307.01. Domestication.**

(a) A foreign business corporation may become a domestic business corporation only if the domestication is permitted by the organic law of the foreign corporation.

(b) A domestic business corporation may become a foreign business corporation if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved by the adoption by the corporation of a plan of domestication in the manner provided in this subchapter.

(c) The plan of domestication shall include:

(1) A statement of the jurisdiction in which the corporation is to be domesticated;

(2) The terms and conditions of the domestication;

(3) The manner and basis of reclassifying the shares of the corporation following its domestication into shares or other securities, obligations, rights to acquire shares or other securities, money, other property, or any combination of the foregoing; and

(4) Any desired amendments to the articles of incorporation of the corporation following its domestication.

(d) The plan of domestication may also include a provision that the plan may be amended prior to filing the document required by the laws of the District or the other jurisdiction to consummate the domestication; provided, that subsequent to approval of the plan by the shareholders, the plan shall not be amended to change:

(1) The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, money, or other property to be received by the shareholders under the plan;

(2) The articles of incorporation as they will be in effect immediately following the domestication, except for changes permitted by § 29-308.05 or by comparable provisions of the laws of the other jurisdiction; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(e) Terms of a plan of domestication may be made dependent upon facts objectively ascertainable outside the plan in accordance with § 29-301.04.

(f) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before the effective date of this chapter contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision shall be amended subsequent to that date.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(21), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “money” for “cash” in (c)(3) and (d)(1); and substituted “signed” for “executed” in (f).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-307.06. Abandonment of a domestication.

(a) Unless otherwise provided in a plan of domestication of a domestic business corporation, after the plan has been adopted and approved as required by this subchapter, and at any time before the domestication has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If a domestication is abandoned under subsection (a) of this section after articles of charter surrender have been delivered to the Mayor for filing but before the domestication has become effective, a statement that the domestication has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the Mayor for filing prior to the effective date of the domestication. The statement shall be effective upon filing and the domestication shall be deemed abandoned and shall not become effective.

(c) If the domestication of a foreign business corporation in the District is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been delivered to the Mayor for filing, a statement that the domestication has been abandoned, signed by an officer or other duly authorized representative, shall be delivered to the Mayor for filing. The statement shall be effective upon filing and the domestication shall be deemed abandoned and shall not become effective.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(22), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “delivered to the Mayor for filing” for “filed with the Mayor” in (b) and (c).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter IX. Merger and Share Exchanges.

§ 29-309.02. Merger.

(a) One or more domestic business corporations may merge with one or more domestic or foreign business corporations pursuant to a plan of merger, or 2 or more foreign business corporations or domestic may merge into a new domestic business corporation to be created in the merger, in the manner provided in this subchapter.

(b) A foreign business may be a party to a merger with a domestic business

corporation, or may be the survivor in such a merger, if the merger is permitted by the jurisdiction of the foreign business corporation is incorporated.

(c) If the organic law of a domestic eligible entity does not provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and appraisal rights exercised in accordance with the procedures in this subchapter and subchapter XI of this chapter. For the purposes of applying this subchapter and subchapter XI of this chapter:

(1) The eligible entity, its members or interest holders, eligible interests and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require; and

(2) If the activities and affairs of the eligible entity are managed by a group of persons that is not identical to the members or interest holders, that group shall be deemed to be the board of directors.

(d) The plan of merger shall include:

(1) The name of each domestic or foreign business corporation that will merge and the name of the domestic or foreign business corporation that will be the survivor of the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each merging domestic or foreign business corporation into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any combination of the foregoing;

(4) The articles of incorporation of any domestic or foreign business corporation to be created by the merger, or if a new domestic or foreign business corporation is not to be created by the merger, any amendments to the survivor's articles of incorporation; and

(5) Any other provisions required by the laws under which any party to the merger is incorporated, or by the articles of incorporation of any such party.

(e) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with § 29-301.04.

(f) The plan of merger may also include a provision that the plan may be amended by the directors or shareholders of a domestic business corporation; provided, that the shareholders that were entitled to vote on the plan shall be entitled to vote on any amendment of the plan that will change:

(1) The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property to be received under the plan by the shareholders of any party to the merger;

(2) The articles of incorporation of any corporation that will survive or be created as a result of the merger, except for changes permitted by § 29-308.05; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(g) A merger in which a business corporation and another form of entity are parties shall be governed by Chapter 2 of this title.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(23), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities” for “business” in (c)(2).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-309.06. Articles of merger or share exchange.

(a) After a plan of merger or a plan of share exchange involving a domestic acquired corporation has been adopted and approved as required by this chapter, articles of merger or share exchange shall be signed on behalf of each party to the merger or the acquired corporation in the share exchange by any officer or other duly authorized representative. The articles shall set forth:

(1) The names of the parties to the merger or share exchange;

(2) If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor’s articles of incorporation or the articles of incorporation of the new corporation;

(3) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this chapter and the articles of incorporation;

(4) If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and

(5) As to each foreign corporation that was a party to the merger or share exchange, a statement that the participation of the foreign corporation was duly authorized as required by the laws of the foreign jurisdiction.

(b) Articles of merger or share exchange shall be delivered to the Mayor for filing by the survivor of the merger or the acquiring corporation in a share exchange and shall be effective at the effective time provided in § 29-102.03.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(24), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “signed” for “executed” in (a).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-309.08. Abandonment of a merger or share exchange.

(a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign business corporation that is a party to a merger or a share exchange is, after the plan has been adopted and approved as

required by this subchapter, and at any time before the merger or share exchange has become effective, it may be abandoned by a domestic business corporation that is a party thereto without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) of this section after articles of merger or share exchange have been delivered to the Mayor for filing, but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, signed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the Mayor for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(25), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 in (b), substituted “delivered to the Mayor for filing” for “filed with the Mayor” and substituted “signed” for “executed.”

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter XI. Appraisal Rights.

PART B.

PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS.

§ 29-311.10. Notice of appraisal rights.

(a) If any corporate action specified in § 29-311.02(a) is to be submitted to a vote at a shareholders’ meeting, the meeting notice shall state that the corporation has concluded that the shareholders are, are not, or may be entitled to assert appraisal rights under this subchapter. If the corporation concludes that appraisal rights are or may be available, a copy of this subchapter shall accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to § 29-309.05, the parent corporation shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. The notice shall be sent within 10 days after the corporate action became effective and include the materials described in § 29-311.12.

(c) If any corporate action specified in § 29-311.02(a) is to be approved by written consent of the shareholders pursuant to § 29-305.04, written notice that appraisal rights are, are not, or may be available shall be:

(1) Sent to each record shareholder from which a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, shall be accompanied by a copy of this subchapter; and

(2) Delivered together with the notice to nonconsenting and nonvoting shareholders required by § 29-305.04(e) and (f), may include the materials described in § 29-311.12, and, if the corporation has concluded that appraisal rights are or may be available, shall be accompanied by a copy of this subchapter.

(d) If corporate action described in § 29-311.02(a) is proposed, or a merger pursuant to § 29-309.05 is effected, the notice referred to in subsection (a) or (c) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (b) of this section shall be accompanied by:

(1) The annual financial statements specified in § 29-313.07(a) of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than 16 months before the date of the notice and shall comply with § 29-313.07(b); provided, that if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(2) The latest available quarterly financial statements of such corporation, if any.

(e) The right to receive the information described in subsection (d) of this section may be waived in writing by a shareholder before or after the corporate action.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(26), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Sent” for “Given” in (c)(1).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-311.11. Notice of intent to demand payment and consequences of voting or consenting.

(a) If a corporate action specified in § 29-311.02(a) is submitted to a vote at a shareholders’ meeting, a shareholder that wishes to assert appraisal rights with respect to any class or series of shares shall:

(1) Deliver to the corporation, before the vote is taken, written notice of the shareholder’s intent to demand payment if the proposed action is effectuated; and

(2) Not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(b) If a corporate action specified in § 29-311.02(a) is to be approved by less than unanimous written consent, a shareholder that wishes to assert appraisal rights with respect to any class or series of shares shall not sign a consent in favor of the proposed action with respect to that class or series of shares.

(c) A shareholder that fails to satisfy the requirements of subsection (a) or (b) of this section shall not be entitled to payment under this subchapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(27), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “sign” for “execute” in (b).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-311.12. Appraisal notice and form.

(a) If a corporate action requiring appraisal rights under § 29-311.02(a) becomes effective, the corporation shall send an appraisal notice in a record and form required by subsection (b)(1) of this section to all shareholders who satisfy the requirements of § 29-311.11(a) or (b). In the case of a merger under § 29-309.05, the parent shall send an appraisal notice in a record and form to all record shareholders that may be entitled to assert appraisal rights.

(b) The appraisal notice shall be delivered no earlier than the date the corporate action specified in § 29-311.02(a) became effective, and no later than 10 days after such date, and shall:

(1) Supply a form that:

(A) Specifies the first date of any announcement to shareholders made before the date the corporate action became effective of the principal terms of the proposed corporate action;

(B) If such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(C) Requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction;

(2) State:

(A) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date shall not be earlier than the date for receiving the required form under subparagraph (B) of this paragraph;

(B) A date by which the corporation must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the appraisal notice is sent, and state that the shareholder has waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

(C) The corporation’s estimate of the fair value of the shares;

(D) That, if requested in writing, the corporation will provide, to the shareholder so requesting, within 10 days after the date specified in paragraph (2)(B) of this subsection the number of shareholders that return the forms by the specified date and the total number of shares owned by them; and

(E) The date by which the notice to withdraw under § 29-311.13 shall be received, which date must be within 20 days after the date specified [in] subparagraph (B) of this paragraph; and

(3) Be accompanied by a copy of this subchapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(28), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “send” for “deliver” and “an appraisal notice in a record” for “a written appraisal notice” throughout (a); substituted “delivered” for “sent” in the introductory language of (b); and substituted “is” for “and form required by subsection (a) of this section are” in (b)(2)(B).

Legislative history of Law 19-210. — See note to § 29-301.03

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter XII. Dissolution.

PART A.

VOLUNTARY DISSOLUTION.

§ 29-312.05. Effect of dissolution.

(a) A dissolved corporation continues its corporate existence but shall not carry on any activities except that appropriate to wind up and liquidate its business and affairs, including:

- (1) Collecting its assets;
- (2) Disposing of its properties that will not be distributed in kind to its shareholders;
- (3) Discharging or making provision for discharging its liabilities;
- (4) Distributing its remaining property among its shareholders according to their interests; and
- (5) Doing every other act necessary to wind up and liquidate its activities and affairs.

(b) Dissolution of a corporation shall not:

- (1) Transfer title to the corporation’s property;
- (2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation’s share transfer records;
- (3) Subject its directors or officers to standards of conduct different from those prescribed in subchapter VI of this chapter;
- (4) Change:
 - (A) Quorum or voting requirements for its board of directors or shareholders;
 - (B) Provisions for selection, resignation, or removal of its directors or officers, or both;
 - (C) Provisions for amending its bylaws;
- (5) Prevent commencement of a proceeding by or against the corporation in its corporate name;
- (6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(7) Terminate the authority of the registered agent of the corporation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(29), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities” for “business” twice in (a).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-312.08. Court proceedings.

(a) A dissolved corporation that has published a notice under § 29-312.07 may file an application with the Superior Court for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under § 29-312.07(c).

(b) Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The Superior Court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the Superior Court under § 29-312.08(a) satisfies the dissolved corporation’s obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution. Such claims shall not be enforced against a shareholder that received assets in liquidation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(30), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Court” for “Judicial” in the section heading.

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

PART B.

JUDICIAL DISSOLUTION.

§ 29-312.20. Grounds for judicial dissolution.

(a) The Superior Court may dissolve a corporation:

(1) In a proceeding by the Attorney General for the District of Columbia if it is established that the corporation:

(A) Obtained its articles of incorporation through fraud; or

(B) Has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the activities and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(C) The shareholders are deadlocked in voting power and have failed, for a period that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(D) The corporate assets are being misapplied or wasted;

(3) In a proceeding by a creditor if it is established that:

(A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(B) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(5) In a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(b) Subsection (a)(2) of this section shall not apply in the case of a corporation that, on the date of the filing of the proceeding, has shares which are:

(1) Listed on the New York Stock Exchange, the American Stock Exchange or on any exchange owned or operated by the NASDAQ Stock Market LLC, or listed or quoted on a system owned or operated by the Financial Industry Regulatory Authority; or

(2) Not so listed or quoted, but are held by at least 300 shareholders and the shares outstanding have a market value of at least \$20 million, exclusive of the value of the shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders owning more than 10% of such shares) [sic].

(c) For the purposes of this section, the term “beneficial shareholder” has the meaning specified in § 29-311.01(2).

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(31), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities” for “business” in (a)(2)(A).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-312.22. Receivership or custodianship.

(a) Unless an election to purchase has been filed under § 29-312.24, the Superior Court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the activities and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all of its property wherever located.

(b) The Superior Court may appoint an individual or a domestic or foreign corporation, authorized to do business in the District, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The Superior Court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended. Among other powers:

(1) The receiver may:

(A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

(B) Sue and defend in his or her own name as receiver of the corporation;

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The Superior Court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and its creditors.

(e) The Superior Court during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(32), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities” for “business” in (a).

Legislative history of Law 19-210. — See note to § 29-301.03.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-312.23. Decree of dissolution.

(a) If, after a hearing, the Superior Court determines that one or more grounds for judicial dissolution described in § 29-312.20 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Mayor, who shall file it.

(b) After entering the decree of dissolution, the Superior Court shall direct the winding-up and liquidation of the corporation’s activities and affairs in accordance with § 29-312.05 and the notification of claimants in accordance with §§ 29-312.06 and 29-312.07.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(33), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities” for “business” in (b).

Legislative history of Law 19-210. — See note to § 29-301.03

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter XIII. Records and Reports.

PART A.

RECORDS.

§ 29-313.02. Inspection of records by shareholders.

(a) A shareholder of a corporation shall be entitled to inspect and copy, during regular business hours at the corporation’s principal office, any of the records of the corporation described in § 29-313.01(e) if the shareholder gives the corporation notice in a record of the shareholder’s demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(b) A shareholder of a corporation shall be entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) of this section and gives the corporation notice in a record of the shareholder’s demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the

shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under § 29-313.02(a);

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(c) A shareholder may inspect and copy the records described in subsection (b) of this section only if:

(1) The shareholder's demand is made in good faith and for a proper purpose; or

(2) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(3) The records are directly connected with the shareholder's purpose.

(d) The right of inspection granted by this section shall not be abolished or limited by a corporation's articles of incorporation or bylaws.

(e) This section shall not affect:

(1) The right of a shareholder to inspect records under § 29-305.20 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of the Superior Court, independently of this chapter, to compel the production of corporate records for examination.

(f) For purposes of this section, the term "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(34), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "notice in a record" for "written notice" in (a) and (b).

Legislative history of Law 19-210. — See note to § 29-301.03

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

PART B.

REPORTS.

§ 29-313.07. Financial statements for shareholders.

(a) A corporation shall deliver to its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, the report shall accompany them. If not, the statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating such person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall mail the annual financial statements to each shareholder within 120 days after the close of each fiscal year. Thereafter, on written request from a shareholder that was not sent the statements, the corporation shall mail the shareholder the latest financial statements.

(d) A public corporation may fulfill its responsibilities under this section by delivering the specified financial statements or otherwise making them available in any manner permitted by the applicable rules and regulations of the United States Securities and Exchange Commission.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(35), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “sent” for “mailed” in (c); and added (d).

Legislative history of Law 19-210. — See note to § 29-301.03

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter XIV. Transition Provisions.

§ 29-314.01. Application to existing domestic corporations.

Except as otherwise provided by § 29-107.01, this chapter shall apply to all domestic corporations in existence on its effective date that were incorporated under any general statute of the District providing for incorporation of corporations for profit.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(36), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added “Except as otherwise provided by § 29-107.01.”

Legislative history of Law 19-210. — See note to § 29-301.03

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-314.02. Application to registered foreign corporations.

A foreign corporation authorized to do business in the District on the

effective date of this chapter shall be subject to this chapter but is not required to obtain a new certificate of registration to do business under this chapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(c)(37), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “registered” for “qualified” in the section heading.

Legislative history of Law 19-210. — See note to § 29-301.03

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

CHAPTER 4. NONPROFIT CORPORATIONS.

Subchapter I. General Provisions

Part D

Part A

Officers

General Provisions

29-406.42. Standards of conduct for officers.

Sec.

29-401.02. Definitions.

Part E

29-401.03. Notice.

Indemnification and Advance for Expenses

29-401.04. Reference to extrinsic facts in plans or filed documents.

29-406.51. Permissible indemnification.

29-401.05. Restrictions and required approvals.

Part H

Part D

Limitations on Liability of Volunteers and Employees

Member-Governed Corporations

29-401.50. Member-governed corporations.

29-406.90. Immunity from civil liability for volunteer of corporation.

Subchapter II. Incorporation

29-402.03. Incorporation.

Subchapter VII. Domestication

Subchapter III. Purposes and Powers

29-407.04. Articles of domestication.

29-403.02. General powers.

29-407.06. Abandonment of a domestication.

Subchapter IV. Memberships and Financial Provisions

Subchapter IX. Mergers and Membership Exchanges

Part A

29-409.03. Membership exchange.

Admission of Members

29-409.08. Abandonment of a merger or membership exchange.

29-404.02. Admission.

Subchapter XII. Dissolution

Part E

Part A

Financial Provisions

Voluntary Dissolution

29-404.43. Private foundations.

29-412.08. Court proceedings.

Subchapter VI. Directors, Officers, and Employees

Subchapter XIII. Records and Reports

Part A

Part A

Board of Directors

Records

29-406.12. Designated body.

29-413.02. Inspection of records by members.

<i>Subchapter XIV. Transition Provisions</i>	Sec.
Sec.	29-414.02. Application to registered foreign corporations.
29-414.01. Application to existing domestic corporations.	29-414.04. Quorum requirement for existing nonprofit corporations.

Subchapter I. General Provisions.

PART A.

GENERAL PROVISIONS.

§ 29-401.02. Definitions.

For the purposes of this chapter, the term:

(1) “Board” or “board of directors” means the group of individuals responsible for the management of the activities and affairs of the nonprofit corporation, regardless of the name used to refer to the group. The term includes a designated body to the extent:

(A) The powers, functions, or authority of the board has been vested in, or are exercised by, the designated body; and

(B) The provision of this chapter in which the term appears is relevant to the discharge by the designated body of its powers, functions, or authority.

(2) “Bylaws” means the code of rules, other than the articles of incorporation, adopted for the regulation and governance of the internal affairs of the nonprofit corporation, regardless of the name or names used to refer to those rules.

(3) “Charitable corporation” means a domestic nonprofit corporation that is operated primarily or exclusively for one or more charitable purposes.

(4) “Charitable purpose” means a purpose that:

(A) Would make a corporation operated exclusively for that purpose eligible to be exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, approved October 22, 1986 (68A Stat. 163; 26 U.S.C. § 501(c)(3)) (“Internal Revenue Code”); or

(B) Is considered charitable under law other than this chapter or the Internal Revenue Code.

(5) “Conspicuous” means so written, displayed, or presented that a reasonable person against which it is to operate should have noticed it. Conspicuous terms include:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language

(6) “Corporation”, “domestic corporation”, “domestic nonprofit corporation”, or “nonprofit corporation” means a corporation incorporated under or subject to this chapter that is not a foreign corporation.

(7) “Delegate” means a person elected or appointed to vote in a representative assembly for the election of directors or on other matters.

(8) “Designated body” means a person or group, other than a committee of the board of directors, that has been vested by the articles of incorporation or bylaws with powers that, if not vested by the articles or bylaws in that person or group, would be required by this chapter to be exercised by the board or the members.

(9) “Director” means an individual designated, elected, or appointed, by that or any other name or title, to act as a member of the board of directors, while the individual is holding that position. The term “director” shall not include a member of a designated body, as such.

(10) “Domestic unincorporated entity” means an unincorporated entity whose internal affairs are governed by the laws of the District.

(11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

(13) “Eligible entity” means a domestic or foreign unincorporated entity or a domestic or foreign business corporation.

(14) “Eligible interests” means interests or shares.

(15) “Employee” does not include an individual serving as an officer or director who is not otherwise employed by the corporation.

(16) “Entitled to vote” means entitled to vote on the matter under consideration pursuant to the articles of incorporation or bylaws of the nonprofit corporation or any applicable controlling provision of law.

(17) “Foreign business corporation” means a corporation for profit incorporated under a law other than the law of the District that would be a business corporation if incorporated under the law of the District.

(18) “Foreign nonprofit corporation” means a corporation incorporated under a law other than the law of the District that would be a nonprofit corporation if incorporated under the law of the District.

(19) “Foreign unincorporated entity” means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than the District.

(20) “Fundamental transaction” means an amendment of the articles of incorporation or bylaws, merger, membership exchange, sale of all or substantially all of the assets, domestication, conversion, or dissolution of a nonprofit corporation.

(21) “Interest holder liability” means personal liability for a debt, obligation, or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:

(A) Solely by reason of the person’s status as a shareholder, interest holder, or member; or

(B) By the articles of incorporation, bylaws, or an organic record pursuant to a provision of the organic law authorizing the articles, bylaws, or

an organic record to make one or more specified shareholders, interest holders, or members liable in their capacity as shareholders, interest holders, or members for all or specified debts, obligations, or liabilities of the entity.

(22) “Material interest” means an actual or potential benefit or detriment, other than one that would devolve on the nonprofit corporation or the members generally, that would reasonably be expected to impair the objectivity of an individual’s judgment when participating in the action to be taken.

(23) “Material relationship” means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of an individual’s judgment when participating in the action to be taken.

(24) “Member” means:

(A) A person that has the right, in accordance with the articles of incorporation or bylaws, and not as a delegate, to select or vote for the election of directors or delegates or to vote on any type of fundamental transaction; or

(B) A designated body to the extent:

(i) The powers, functions, or authority of the members has been vested in, or are exercised by, the designated body; and

(ii) The provision of this chapter in which the term “member” appears is relevant to the discharge by the designated body of its powers, functions, or authority.

(25) “Membership” means the rights and any obligations of a member in a nonprofit corporation.

(26) “Membership corporation” means a nonprofit corporation whose articles of incorporation or bylaws provide that it must have members.

(27) “Nonmembership corporation” means a nonprofit corporation whose articles of incorporation or bylaws do not provide that it must have members.

(28) “Nonregistered foreign corporation” means a foreign corporation that is not authorized to conduct activities in the District.

(29) “Officer” includes:

(A) An individual who is an officer as provided in § 29-406.40; and

(B) If a nonprofit corporation is in the hands of a custodian, receiver, trustee, or other court-appointed fiduciary, that fiduciary or any person appointed by that fiduciary to act as an officer for any purpose under this chapter.

(30) “Organic record” means a public organic record or the private organic rules.

(31) “Record date” means the date established under § 29-405.07 on which a nonprofit corporation determines the identity of its members and the membership interests they hold for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(32) “Religious corporation” means a domestic nonprofit corporation that is a church or an integrated auxiliary of a church, as defined under the federal Internal Revenue Code or regulations promulgated thereunder, or any other such nonprofit corporation whose principal purpose is the advancement of religion.

(33) “Secretary” means the corporate officer to whom the articles of incorporation, bylaws, or board of directors has delegated responsibility under § 29-406.40(b) for custody of the minutes of the meetings of the board of directors, any designated body, committees, and the members, and for authenticating records of the nonprofit corporation.

(34) “Shareholder” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

(35) “Shares” means the units into which the proprietary interests in a business corporation are divided.

(36) “Unincorporated entity” means an organization that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not a domestic or foreign business or nonprofit corporation, an estate, a trust, a governmental subdivision, a state, the United States, or a foreign government. The term “unincorporated entity” includes a general partnership, limited liability company, limited partnership, limited cooperative association, business or statutory trust, joint stock association, and unincorporated nonprofit association.

(37) “Vote”, “voting”, or “casting a vote” includes the giving of consent in the form of a record without a meeting. The term does not include either recording the fact of abstention or failing to vote for a candidate or for approval or disapproval of a matter, whether or not the person entitled to vote characterizes such conduct as voting or casting a vote.

(38) “Voting group” means one or more classes of members that under the articles of incorporation, bylaws, or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of members. All members entitled by the articles of incorporation, bylaws, or this chapter to vote generally on the matter are for that purpose a single voting group.

(39) “Voting power” means the current power to vote in the election of directors or delegates, or to vote on approval of any type of fundamental transaction.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(2), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Nonregistered” for “Nonqualified” in (28).

Legislative history of Law 19-210. — Law 19-210, the “District of Columbia Official Code Title 29 Technical and Harmonizing Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-532. The Bill was adopted on first and second readings on July

10, 2012, and Oct. 2, 2012, respectively. Signed by the Mayor on Oct. 31, 2012, it was assigned Act No. 19-512 and transmitted to Congress for its review. D.C. Law 19-210 became effective on Mar. 5, 2013.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-401.03. Notice.

(a) Unless the articles of incorporation or bylaws provide otherwise, notice under this chapter shall be in the form of a record.

(b) Notice may be communicated in person or by delivery. If these forms of

communication are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Notice in the form of a record by a membership corporation to a member shall be effective:

(1) Upon deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed to the member's address shown in the corporation's current record of members; or

(2) When given if the notice is delivered in any other manner that the member has authorized.

(d) Notice to a domestic or registered foreign nonprofit corporation may be delivered to its registered agent or to the corporation or its secretary at its principal office shown in its most recent biennial report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of registration.

(e) Except as otherwise provided in subsection (c) of this section, notice shall be effective at the earliest of the following:

(1) When received;

(2) When left at the recipient's residence or usual place of business;

(3) Five days after its deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed; or

(4) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, or by commercial delivery service.

(f) Oral notice shall be effective when communicated, if communicated in a comprehensible manner.

(g) If this chapter prescribes notice requirements for particular circumstances, those requirements shall govern. If bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements shall govern.

(h) With respect to electronic communications:

(1) Unless otherwise provided in the articles of incorporation or bylaws, or otherwise agreed between the sender and the recipient, an electronic communication is received when:

(A) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(B) It is in a form capable of being processed by that system.

(2) An electronic communication is received under paragraph (1) of this subsection even if no individual is aware of its receipt.

(3) Receipt of an electronic acknowledgment from an information processing system described in paragraph (1) of this subsection establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(i) An authorization by a member of delivery of notices or communications by email or similar electronic means may be revoked by the member by notice

to the nonprofit corporation in the form of a record. The authorization shall be deemed revoked if:

(A) The corporation is unable to deliver 2 consecutive notices or other communications to the member in the manner authorized; and

(B) The inability becomes known to the secretary or other person responsible for giving the notice or other communication, but the failure to treat the inability as a revocation shall not invalidate any meeting or other action.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(3), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “registered” for “qualified” in (d); redesignated former (g) and (h) as (h) and (i), respectively; and redesignated the former second subsection (f) as (g).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-401.04. Reference to extrinsic facts in plans or filed documents.

(a) For the purposes of this subsection, the term:

(1) “Filed record” means a record delivered to the Mayor for filing under any provision of this chapter except § 29-102.11.

(2) “Plan” means a plan of domestication, business conversion, entity conversion, merger or membership exchange.

(b) Whenever a provision of this chapter permits any of the terms of a plan or a filed record to be dependent on facts objectively ascertainable outside the plan or filed record, the following rules apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed record shall be set forth in the plan or filed record.

(2) The facts may include:

(A) Any of the following that is available in a nationally recognized news or information medium either in print or electronically:

- (i) Statistical or market indices;
- (ii) Market prices of any security or group of securities;
- (iii) Interest rates;
- (iv) Currency exchange rates; or
- (v) Similar economic or financial data;

(B) A determination or action by any person or body, including the corporation or any other party to a plan or filed record; or

(C) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or record.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(4), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “delivered to the Mayor for filing” for “filed with the Mayor” in (a)(1).

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-401.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-401.05. Restrictions and required approvals.

(a) If a domestic or foreign nonprofit corporation or eligible entity may not be a party to a merger or sale of its assets without the approval of the Attorney General for the District of Columbia, the Mayor (or as may be formerly referred to as the Commissioner of the District of Columbia), the Department of Insurance, Securities, and Banking or the Public Service Commission, the corporation or eligible entity shall not be a party to a transaction under Chapter 2 of this title without the prior approval of that officer or agency.

(b) Property held in trust by an entity or otherwise dedicated to a charitable purpose shall not be diverted from its purpose by any transaction under Chapter 2 of this title unless the entity obtains an appropriate order of the Superior Court specifying the disposition of the property to the extent required by and pursuant to the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets.

(c) Unless an entity that is a party to a transaction under Chapter 2 of this title obtains an appropriate order of Superior Court under the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets, the transaction shall not affect:

(1) Any restriction imposed upon the entity by its organic records that may not be amended by its board of directors, governors, members, or interest holders or by a designated body;

(2) Any restriction imposed upon property held by the entity by virtue of any trust under which it holds that property; or

(3) The existing rights of persons other than members, shareholders, or interest holders of the entity.

(d) A person that is a member, interest holder, or otherwise affiliated with a charitable corporation or an unincorporated entity with a charitable purpose shall not receive a direct or indirect financial benefit in connection with a transaction under Chapter 2 of this title to which the charitable corporation or unincorporated entity is a party unless the person is itself a charitable corporation or unincorporated entity with a charitable purpose. This subsection shall not apply to the receipt of reasonable compensation for services rendered.

(e) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made before or after a transaction under Chapter 2 of this title to or for the entity that is the subject of the transaction, shall inure to the entity as it continues in existence after the transaction, subject to the express terms of the will or other instrument.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(5), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Chapter 2 of this title” for “this chapter” in (a) through (e).

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

PART D.

MEMBER-GOVERNED CORPORATIONS.

§ 29-401.50. Member-governed corporations.

(a) For the purposes of this section, the term “member-governed corporation” means a membership corporation incorporated under or subject to this chapter which:

(1) Provides in its articles of incorporation or bylaws that it is a member-governed corporation; or:

(2) Meets the following conditions:

(A) It holds regular meetings not less frequently than annually;

(B) Its activities and affairs are governed by its members; and

(C) The board of directors, if any, has only those powers delegated by the articles of incorporation, bylaws, or members.

(b) This section shall apply only to member-governed corporations and shall not be construed to affect in any way the rights, duties, obligations, or other matters pertaining to other types of nonprofit corporations formed under or subject to this chapter or other entities formed under or subject to this title.

(c) Except as otherwise provided in the articles of incorporation or bylaws, the following rules shall apply to a member-governed corporation:

(1) A member shall vote only in person and not by proxy.

(2) A voting agreement shall not be enforceable.

(3) A fundamental transaction may be approved by a $\frac{2}{3}$ vote of the members of the corporation without the approval of the board of directors, if any.

(4) The members may set a record date in the circumstances described in § 29-405.07(c).

(5) The polls may be closed by a $\frac{2}{3}$ vote of the members present and voting in the circumstances described in § 29-405.08(d).

(6) At a meeting of a member-governed corporation, the members present and voting are the ultimate judge of the validity of ballots under §§ 29-405.23(c) and 29-405.28.

(7) The qualifications of a director under § 29-406.08(c)(5) are determined by the members.

(d) The articles of incorporation or bylaws of a member-governed corporation may contain any of the following provisions:

(1) Providing that a meeting of the members under § 29-405.01 may be held biennially, and, if the articles of incorporation or bylaws establish an assembly of delegates, providing that instead of meetings of members the assembly of delegates shall meet with a regularity the articles of incorporation or bylaws specify, not less frequently than quinquennially;

(2) Establishing the number of mail ballots that constitute a quorum under § 29-405.09;

(3) Stating the circumstances under which a member who was present at a meeting but who leaves the meeting is or is not deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting under § 29-405.24(b);

(4) Permitting cumulative voting for directors;

(5) Providing that the maximum term of a director under § 29-406.05 may be up to six years;

(6) Providing that the resignation of a director under § 29-406.07 is not effective until approved by the members;

(7) Establishing the quorum required for a meeting of the board of directors under § 29-406.24(b);

(8) Providing that if a quorum is present when a vote is taken, the affirmative vote of a majority of the votes cast, rather than a majority of those present, is the act of the board of directors unless a greater vote is required by the articles of incorporation and bylaws;

(9) Stating the circumstances under which a director present at a meeting is not considered to have assented to a corporate action under § 29-406.24(d);

(10) Creating and defining the membership and powers of committees under § 29-406.25(b), (e)(2), and (h);

(11) Providing that the same person may not simultaneously hold more than one office in a member-governed corporation; and

(12) Providing that the resignation of an officer under § 29-406.43 is not effective until approved by the members.

(e) If a member-governed corporation adopts a specified generally accepted parliamentary authority in its bylaws, rules in the specified parliamentary authority and in special rules of order adopted as provided in the parliamentary authority shall be treated as provisions of the bylaws for the purposes of this chapter, except to the extent such rules are inconsistent with explicit provisions of the articles of incorporation or the bylaws. The rules of any such adopted parliamentary authority shall be presumed to be fair to the members pursuant to § 29-405.08(c).

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(6), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “meetings” for “meeting” in (a)(2)(A); and substituted “an officer” for “a officer” in (d)(12).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

*Subchapter II. Incorporation.***§ 29-402.03. Incorporation.**

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The filing of the articles of incorporation by the Mayor is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the District to cancel or revoke the incorporation or involuntarily dissolve the nonprofit corporation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(7), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “District” for “state” in (b).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

*Subchapter III. Purposes and Powers.***§ 29-403.02. General powers.**

Unless its articles of incorporation provide otherwise, every nonprofit corporation shall have perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including the power to:

- (1) Sue and be sued, complain, and defend in its corporate name;
- (2) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the District, for managing and regulating the affairs of the corporation;
- (4) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, property, or any legal or equitable interest in property, wherever located;
- (5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) Make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property or income;
- (8) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by § 29-406.32;

- (9) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (10) Conduct its activities, locate offices, and exercise the powers granted by this chapter within or without the District;
- (11) Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit, except as limited by § 29-406.32;
- (12) Pay pensions and establish pension plans, pension trusts, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (13) Make donations for charitable purposes;
- (14) Impose dues, assessments, admission, and transfer fees on its members;
- (15) Establish conditions for admission of members, admit members, and issue memberships;
- (16) Carry on a business; and
- (17) Make payments or donations, or do any other act, not inconsistent with law, that furthers the purposes, activities, and affairs of the corporation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(8), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 deleted “real or personal” following “with,” in (4).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-403.04. Ultra vires.

CASE NOTES

Parties.

Plaintiffs did not have standing to bring a derivative action on nonprofit corporation’s behalf against individuals who were corporation’s directors and allegedly engaged in ultra vires acts, even though the District of Columbia Nonprofit Corporation Act provided that a challenge to a corporation’s power to act could be brought the corporation through a legal representative; plaintiffs were not current officers or

directors of corporation, even assuming that “legal representative” could be an officer or a director, and were not members of corporation, which was formed as a non-member corporation, and it did not appear that plaintiffs complied with the procedural requirements for asserting a derivative claim. *The Federation for World Peace and Unification International, et al. v. Moon, et al.*, 140 WLR 1605 (Super. Ct. 2012).

Subchapter IV. Memberships and Financial Provisions.

PART A.

ADMISSION OF MEMBERS.

§ 29-404.02. Admission.

(a) The articles of incorporation or bylaws of a membership corporation may establish criteria or procedures for admission of members.

(b) A person shall not be admitted as a member without the person's consent.

(c) If a membership corporation provides certificates of membership to the members, the certificates shall not be registered and shall not be transferable except as otherwise provided in the articles of incorporation or bylaws.

(d) A person shall not be a member of a nonprofit corporation unless the person meets the definition of a "member" in § 29-401.02, regardless of whether the corporation refers to the person as a member.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(9), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "transferable" for "able" in (c).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

PART E.

FINANCIAL PROVISIONS.

§ 29-404.43. Private foundations.

(a) Except as otherwise provided in subsection (b) of this section, a nonprofit corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986, approved December 30, 1969 (83 Stat. 496; 26 U.S.C. § 509(a)) ("Internal Revenue Code"), shall:

(1) Distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under section 4942 of the Internal Revenue Code;

(2) Not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(3) Not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(4) Not make any investments in such manner as to subject the corporation to tax under section 4944 of the Internal Revenue Code; and

(5) Not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code.

(b) Subsection (a) of this section shall not apply to a nonprofit corporation incorporated before January 1, 1970 that has been properly relieved from the requirements of section 508(e)(1) of the Internal Revenue Code by a timely judicial proceeding.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(10), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “1986” for “2986” in (a).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VI. Directors, Officers, and Employees.

PART A.

BOARD OF DIRECTORS.

§ 29-406.12. Designated body.

(a) Some, but less than all, of the powers, authority, or functions of the board of directors of a nonprofit corporation under this chapter may be vested by the articles of incorporation or bylaws in a designated body. If a designated body is created:

(1) This subchapter and other provisions of law on:

(A) The rights, duties, and liabilities of the board of directors or directors individually shall also apply to the designated body and to the members of the designated body individually; and

(B) Meetings, notice, and the manner of acting of the board of directors shall also apply to the designated body in the absence of an applicable rule in the articles of incorporation, bylaws, or internal operating rules of the designated body;

(2) To the extent the powers, authority, or functions of the board of directors have been vested in the designated body, the directors shall be relieved from their duties and liabilities with respect to those powers, authority, and functions; and

(3) A provision of the articles of incorporation regarding indemnification of directors or limiting the liability of directors adopted pursuant to § 29-402.02(b)(8) or (c) applies to members of the designated body, except as otherwise provided in the articles.

(b) Some, but less than all, of the rights or obligations of the members of a nonprofit corporation under this chapter may be vested by the articles of incorporation or bylaws in a designated body. If such a designated body is created:

(1) This subchapter and other provisions of law on:

(A) The rights and obligations of members shall also apply to the designated body and to the members of the designated body individually; and

(B) Meetings, notice, and the manner of acting of members shall also apply to the designated body in the absence of an applicable provision in the articles of incorporation, bylaws, or internal operating rules of the designated body;

(2) To the extent the rights or obligations of the members have been vested in the designated body, the members shall be relieved from responsibility with respect to those rights and obligations.

(c) The articles of incorporation or bylaws may prescribe qualifications for members of a designated body. Except as otherwise provided in the articles or bylaws, a member of a designated body does not need to be:

(1) An individual;

(2) A director, officer, or member of the nonprofit corporation; or

(3) A resident of the District.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(11), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “incorporation or bylaws in a designated body” for “incorporation in a designated body” in (a).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

PART D.

OFFICERS.

§ 29-406.42. Standards of conduct for officers.

(a) An officer with discretionary authority shall discharge his or her duties under that authority:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the corporation.

(b) The duty of an officer shall include the obligation to inform:

(1) The superior officer to whom, or the board of directors or the committee thereof to which, the officer reports of information about the affairs of the nonprofit corporation known to the officer, within the scope of the officer’s functions, and known to the officer to be material to the superior officer, board, or committee; and

(2) His or her superior officer, or another appropriate person within the nonprofit corporation, or the board of directors, or a committee thereof, of any actual or probable material violation of law involving the corporation or

material breach of duty to the corporation by an officer, employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.

(c) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the nonprofit corporation whom the officer reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:

(A) Within the particular person's professional or expert competence; or

(B) As to which the particular person merits confidence;

(3) In the case of a religious corporation, religious authorities and ministers, priests, rabbis, imams, or other persons whose positions or duties the officer reasonably believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(12), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "religious corporation" for "corporation engaged in a religious activity" in (c)(3).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

PART E.

INDEMNIFICATION AND ADVANCE FOR EXPENSES.

§ 29-406.51. Permissible indemnification.

(a) Except as otherwise provided in this section, a nonprofit corporation may indemnify an individual who is a party to a proceeding because he or she is or was a director against liability incurred in the proceeding if:

(1) The individual:

(A) Acted in good faith;

(B) Reasonably believed:

(i) In the case of conduct in an official capacity, that the conduct was in the best interests of the corporation; and

(ii) In all other cases, that the individual's conduct was at least not opposed to the best interests of the corporation; and

(C) In the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful; or

(2) The individual engaged in conduct for which broader indemnification

has been made permissible or obligatory under a provision of the articles of incorporation, as authorized by § 29-402.02(b)(7).

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and the beneficiaries of the plan is conduct that satisfies the requirement of subsection (a)(1)(B)(ii) of this section.

(c) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(d) Unless ordered by a court under § 29-406.54(a)(3), a nonprofit corporation shall not indemnify a director:

(1) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a) of this section; or

(2) In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in an official capacity.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(13), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “§ 29-402.02(b)(7)” for “§ 29-402.02(b)(8)” in (a)(2).

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Legislative history of Law 19-210. — See note to § 29-401.02.

PART H.

LIMITATIONS ON LIABILITY OF VOLUNTEERS AND EMPLOYEES.

§ 29-406.90. Immunity from civil liability for volunteer of corporation.

(a) For the purposes of this section, the term “volunteer” means an officer, director, trustee, or other person who performs services for the corporation and who does not receive compensation other than reimbursement of expenses for those services.

(b) Any person who serves as a volunteer of the corporation shall be immune from civil liability except if the injury or damage was a result of:

(1) The willful misconduct of the volunteer;

(2) A crime, unless the volunteer had reasonable cause to believe that the act was lawful;

(3) A transaction that resulted in an improper personal benefit of money, property, or service to the volunteer; or

(4) An act or omission that is not in good faith and is beyond the scope of authority of the corporation pursuant to this chapter or the corporate charter.

(c) This section shall apply only if the corporation maintains liability insurance with a limit of coverage of not less than \$200,000 per individual claim and \$500,000 per total claims that arise from the same occurrence. This subsection shall not apply to any corporation having annual total functional expenses, exclusive of grants and allocations, of less than \$100,000, and which is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(d) This section shall not exempt the corporation from liability for the conduct of the volunteer, but the corporation shall be liable only to the extent of the applicable limit of insurance coverage it maintains.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(14), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “1986” for “1954, August 26, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3))” in (c); and substituted “shall not exempt” for “shall not be exempt” in (d).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VII. Domestication.

§ 29-407.04. Articles of domestication.

(a) Articles of domestication shall be signed on behalf of the domesticating corporation by any officer or other duly authorized representative. The articles shall set forth:

(1) The name and jurisdiction of incorporation of the domesticating corporation;

(2) The name and jurisdiction of incorporation of the domesticated entity; and

(3) If the domesticating corporation is a domestic nonprofit corporation, a statement that the plan of domestication was approved in accordance with this subtitle [subchapter] or, if the domesticating corporation is a foreign nonprofit corporation, a statement that the domestication was approved in accordance with the law of its jurisdiction of incorporation.

(b) If the domesticated corporation is a domestic nonprofit corporation, the articles of domestication shall either contain all of the provisions that § 29-402.02(a) requires to be set forth in articles of incorporation and any other desired provisions that § 29-402.02(b) and (c) permits to be included in articles of incorporation, or must have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted, except that the name and address of the initial registered agent of the domesticated corporation shall be included. The name of the domesticated corporation shall satisfy the requirements of § 29-103.01.

(c) The articles of domestication shall be delivered to the Mayor for filing and take effect at the effective time provided in § 29-102.03.

(d) If the domesticating corporation is a registered foreign nonprofit corporation, its certificate of registration shall be canceled automatically on the effective date of its domestication.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(15), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “registered” for “qualified” in (d).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-407.06. Abandonment of a domestication.

(a) Unless otherwise provided in a plan of domestication of a domestic nonprofit corporation, after the plan has been adopted and approved as required by this subtitle [subchapter], and at any time before the domestication has become effective, it may be abandoned by the board of directors without action by the members.

(b) If a domestication is abandoned under subsection (a) of this section after articles of domestication have been delivered to the Mayor for filing but before the domestication has become effective, a statement that the domestication has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the Mayor for filing prior to the effective date of the domestication. The statement shall be effective upon filing and the domestication shall be abandoned and shall not become effective.

(c) If the domestication of a foreign nonprofit corporation in the District is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been delivered to the Mayor for filing, a statement that the domestication has been abandoned, signed by an officer or other duly authorized representative, shall be delivered to the Mayor for filing. The statement shall be effective upon filing and the domestication shall be abandoned and shall not become effective.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(16), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “delivered to the Mayor for filing” for “filed with the Mayor” in (b) and (c).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter IX. Mergers and Membership Exchanges.

§ 29-409.03. Membership exchange.

(a) Through a membership exchange:

(1) A domestic nonprofit corporation may acquire, pursuant to a plan of

membership exchange, all of the memberships of one or more classes of another domestic or foreign nonprofit corporation, or all of the eligible interests of one or more classes or series of eligible interests of a domestic or foreign nonprofit corporation, in exchange for memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing; and

(2) All of the memberships of one or more classes of a domestic nonprofit corporation may be acquired by another domestic or foreign nonprofit corporation or eligible entity, in exchange for memberships, eligible interests, securities, obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing, pursuant to a plan of membership exchange.

(b) A foreign nonprofit corporation or eligible entity may be a party to a membership exchange only if the membership exchange is permitted by the organic law of the corporation or eligible entity.

(c) If the organic law of a domestic eligible entity does not prohibit a membership exchange with a nonprofit corporation but does not provide procedures for the approval of an exchange of interests similar to a membership exchange, a plan of membership exchange may be adopted and approved, and the membership exchange effectuated, in accordance with the procedures, if any, for a merger. If the organic law of a domestic eligible entity does not provide procedures for either an interest exchange or a merger, a plan of membership exchange may be adopted and approved, and the membership exchange effectuated, in accordance with the procedures in this subchapter. For the purposes of applying this subchapter:

(1) The eligible entity, its interest holders, eligible interests, and organic documents shall be deemed to be a domestic nonprofit corporation, members, memberships, and articles of incorporation and bylaws, respectively, as the context may require; and

(2) If the activities and affairs of the eligible entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(d) The plan of membership exchange shall be in the form of a record and include:

(1) The name of each domestic or foreign nonprofit corporation or eligible entity whose memberships or eligible interests will be acquired and the name of the corporation or eligible entity that will acquire those memberships or eligible interests;

(2) The terms and conditions of the membership exchange;

(3) The manner and basis of exchanging the memberships of a corporation or the eligible interests in an eligible entity whose memberships or eligible interests will be acquired under the membership exchange into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing;

(4) Any changes desired to be made in the organic records of the exchanging entity; and

(5) Any other provisions relating to the membership exchange that the parties desire be included in the plan of exchange.

(e) The plan of membership exchange may also include a provision that the plan may be amended prior to filing articles of membership exchange, but if the members of a domestic nonprofit corporation that is a party to the membership exchange are required or permitted to vote on the plan, the plan shall provide that subsequent to approval of the plan by such members the plan shall not be amended to change:

(1) The amount or kind of memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; or other property or other consideration to be issued by the domestic nonprofit corporation or to be received by its members, as the case may be; or

(2) Any of the other terms or conditions of the plan if the change would adversely affect such members in any material respect.

(f) Terms of a plan of membership exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with § 29-401.04.

(g) This section shall not limit the power of a domestic nonprofit corporation to acquire memberships in another corporation or eligible interests in an eligible entity in a transaction other than a membership exchange.

(h) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic exchanging entity before the effective date of this chapter contains a provision applying to a merger or change in control of the exchanging entity that does not refer to a membership exchange, the provision shall be deemed to apply to a membership exchange of the exchanging entity until such time as the provision is amended subsequent to that date.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(17), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities” for “business” in (c)(2).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-409.08. Abandonment of a merger or membership exchange.

(a) Unless otherwise provided in a plan of merger or membership exchange or in the organic law of a foreign nonprofit corporation that is a party to a merger or a membership exchange, after the plan has been adopted and approved as required by this subchapter, and at any time before the merger or membership exchange has become effective, it may be abandoned by a domestic nonprofit corporation that is a party thereto without action by its members, in accordance with any procedures set forth in the plan of merger or membership exchange or, if no such procedures are set forth in the plan, in the

manner determined by the board of directors, subject to any contractual rights of other parties to the merger or membership exchange.

(b) If a merger or membership exchange is abandoned under subsection (a) of this section after articles of merger or membership exchange have been delivered to the Mayor for filing but before the merger or membership exchange has become effective, a statement that the merger or membership exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or membership exchange by an officer or other duly authorized representative, shall be delivered to the Mayor for filing prior to the effective date of the merger or membership exchange. Upon filing, the statement shall be effective and the merger or membership exchange shall be deemed abandoned and shall not become effective.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(18), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “delivered to the Mayor for filing” for “filed with the Mayor” in (b).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter XI. Derivative Proceedings.

§ 29-411.02. Standing.

CASE NOTES

In general.

Plaintiffs did not have standing to bring a derivative action on nonprofit corporation’s behalf against individuals who were corporation’s directors and allegedly engaged in ultra vires acts, even though the District of Columbia Nonprofit Corporation Act provided that a challenge to a corporation’s power to act could be brought the corporation through a legal representative; plaintiffs were not current officers or

directors of corporation, even assuming that “legal representative” could be an officer or a director, and were not members of corporation, which was formed as a non-member corporation, and it did not appear that plaintiffs complied with the procedural requirements for asserting a derivative claim. The Federation for World Peace and Unification International, et al. v. Moon, et al., 140 WLR 1605 (Super. Ct. 2012).

Subchapter XII. Dissolution.

PART A.

VOLUNTARY DISSOLUTION.

§ 29-412.08. Court proceedings.

(a) A dissolved nonprofit corporation that has published a notice under § 29-412.07 may file an application with the Superior Court for a determination of the amount and form of security to be provided for payment of claims

that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under § 29-412.07(c).

(b) Within 10 days after the filing of the application, notice of the proceeding must be given by the dissolved nonprofit corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The Superior Court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved nonprofit corporation.

(d) Provision by the dissolved nonprofit corporation for security in the amount and the form ordered by the Superior Court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and such claims shall not be enforced against a person that received assets in liquidation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(19), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Court” for “Judicial” in the section heading.

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter XIII. Records and Reports.

PART A.

RECORDS.

§ 29-413.02. Inspection of records by members.

(a) Subject to § 29-413.07, a member of a nonprofit corporation shall be entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in § 29-413.01(e) if the member delivers to the corporation a signed notice in the form of a record at least 5 business days before the date on which the member wishes to inspect and copy.

(b) A member of a nonprofit corporation shall be entitled to inspect and copy, during regular business hours at a reasonable location specified by the

corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) of this section and delivers to the corporation a signed notice in the form of a record at least 5 business days before the date on which the member wishes to inspect and copy:

(1) Excerpts from any records required to be maintained under § 29-413.01(a), to the extent not subject to inspection under § 29-413.02(a);

(2) Accounting records of the corporation; and

(3) Subject to § 29-413.07, the membership list.

(c) A member may inspect and copy the records described in subsection (b) of this section only if:

(1) The member's demand is made in good faith and for a proper purpose;

(2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(3) The records are directly connected with this purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a nonprofit corporation's articles of incorporation or bylaws.

(e) This section shall not affect:

(1) The right of a member to inspect records under § 29-405.20 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independently of this chapter, to compel the production of corporate records for examination.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(20), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “may not” for “may” in (d).

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter XIV. Transition Provisions.

§ 29-414.01. Application to existing domestic corporations.

Except as otherwise provided by § 29-107.01, this chapter shall apply to all domestic nonprofit corporations in existence on its effective date that were incorporated under any general statute of the District providing for incorporation of nonprofit corporations.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(21), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added “Except as otherwise provided by § 29-107.01.”

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-414.02. Application to registered foreign corporations.

A foreign nonprofit corporation authorized to do business in the District on the effective date of this chapter shall be subject to this chapter, but is not required to obtain a new certificate of registration to do business under this chapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(d)(22), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “registered” for “qualified” in the section heading.

Legislative history of Law 19-210. — See note to § 29-401.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-414.04. Quorum requirement for existing nonprofit corporations.

With respect to a nonprofit corporation that was in existence on the effective date of this chapter, except as otherwise provided in the articles of incorporation or bylaws, one-tenth of the votes of members entitled to vote in person or by proxy shall constitute a quorum.

(Mar. 5, 2013, D.C. Law 19-210, § 2(d)(23), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-401.02.

210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor’s notes. — Application of Law 19-

CHAPTER 5. PROFESSIONAL CORPORATIONS.

Sec.
29-502. Definitions.
29-516. Perpetual duration; dissolution.

§ 29-502. Definitions.

For the purposes of this chapter, the term:

(1) “License” means license, certification, certificate, or registration, or other legal authorization required by law as a condition precedent to the rendering of professional service within the District.

(2) “Professional corporation” means a corporation organized under this chapter solely for the specific purposes provided under this chapter and which has, as its shareholders, only individuals who themselves are duly licensed to render the same professional service as the corporation.

(3) “Professional service” means any type of personal service to the public which may be lawfully rendered only pursuant to a license and which by law, custom, standards of professional conduct or practice in the District before December 10, 1971, could not be rendered by a corporation, including the

services performed by certified public accountants, attorneys, architects, health professionals as defined in section 101(8) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01(8)), and professional engineers.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(e)(1), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “health professionals as defined in section 101(8) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01(8))” for “practitioners of the healing arts, dentists, optometrists, podiatrists” in (3).

Legislative history of Law 19-210. — Law 19-210, the “District of Columbia Official Code Title 29 Technical and Harmonizing Amend-

ments Act of 2012,” was introduced in Council and assigned Bill No. 19-532. The Bill was adopted on first and second readings on July 10, 2012, and Oct. 2, 2012, respectively. Signed by the Mayor on Oct. 31, 2012, it was assigned Act No. 19-512 and transmitted to Congress for its review. D.C. Law 19-210 became effective on Mar. 5, 2013.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-516. Perpetual duration; dissolution.

(a) A professional corporation shall have perpetual duration, except that whenever all shareholders of a professional corporation cease at any time for any reason to be licensed to perform the professional services for which the corporation was organized, the professional corporation shall be treated as having converted into a corporation organized under Chapter 3 of this title.

(b) Articles of conversion shall be delivered to the Mayor for filing and meet the requirements of § 29-204.05.

(c) Dissolution by a professional corporation shall meet the requirements of § 29-312.03.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(e)(2), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-502.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

CHAPTER 6. GENERAL PARTNERSHIPS.

Subchapter I. General Provisions

Sec.

29-601.02. Definitions.

29-601.03. Knowledge and notice.

29-601.04. Effect of partnership agreement; nonwaivable provisions.

Sec.

29-601.05. Execution, filing, and recording of statements.

29-601.06. Governing law.

29-601.08. Partnership agreement; effect on partnership and person becoming partner; preformation agreement.

- Sec.
29-601.09. Partnership agreement; effect on third parties and relationship to records effective on behalf of partnership.
- 29-601.10. Signing and filing pursuant to judicial order.
- 29-601.11. Liability for inaccurate information in filed record.
- Subchapter III. Relations of Partners to Persons Dealing with Partnership*
- 29-603.03. Statement of partnership authority.
- 29-603.04. Statement of denial.
- 29-603.06. Partner's liability.
- 29-603.07. Actions by and against partnership and partners.
- Subchapter IV. Relations of Partners to Each Other and to Partnership*
- 29-604.01. Partner's rights and duties.
- 29-604.02. Becoming partner.
- 29-604.03. Form of contribution.
- 29-604.04. Liability for contributions.
- 29-604.05. Distributions in kind; sharing of and right to distribution before dissolution.
- 29-604.06. Partner's rights and duties beyond definite term or particular undertaking.
- 29-604.07. General standards of partner's conduct.
- 29-604.08. Actions by partnership and partners.
- 29-604.09. Continuation of partnership beyond definite term or particular undertaking.
- Subchapter V. Transferees and Creditors of Partner*
- 29-605.02. Partner's transferable interest in partnership.
- 29-605.03. Transfer of partner's transferable interest.
- 29-605.05. Power of legal representative of deceased partner.
- Subchapter VI. Partner's Dissociation*
- 29-606.01. Events causing partner's dissociation.
- Sec.
29-606.03. Effect of partner's dissociation.
- Subchapter VII. Partner's Dissociation When Business Not Wound Up*
- 29-607.02. Dissociated partner's power to bind and liability to partnership.
- 29-607.03. Dissociated partner's liability to other persons.
- 29-607.05. Continued use of partnership name.
- Subchapter VIII. Dissolution and Winding Up*
- 29-608.01. Events causing dissolution and winding up of partnership business.
- 29-608.02. Partnership continues after dissolution.
- 29-608.03. Right to wind up partnership.
- 29-608.04. Partner's power to bind partnership after dissolution.
- 29-608.05. Statement of dissolution.
- 29-608.06. Partner's liability to other partners after dissolution.
- 29-608.07. Settlement of accounts and contributions among partners.
- 29-608.08. Known claims against dissolved limited liability partnership.
- 29-608.09. Other claims against dissolved limited liability partnership.
- 29-608.10. Court proceedings.
- 29-608.11. Liability of partner and person dissociated as partner when claim against limited liability partnership is barred.
- 29-608.12. Rescinding dissolution.
- Subchapter IX. Mergers and Internal Exchanges*
- 29-609.05. Interest exchanges.
- Subchapter X. Limited Liability Partnership*
- 29-610.02. Limitations on distributions by limited liability partnership.
- 29-610.03. Liability for improper distributions by limited liability partnership.
- 29-610.04. Administrative revocation of statement of qualification.
- 29-610.05. Reinstatement.
- 29-610.06. Judicial review of denial of reinstatement.

Subchapter I. General Provisions.

§ 29-601.02. Definitions.

For the purposes of this chapter, the term:

- (1) "Business" includes every trade, occupation, and profession.
- (2) "Contribution", except in the phrase "right of contribution", means

property or a benefit described in § 29-604.03 provided by a person to a partnership to become a partner or in the person's capacity as a partner.

(3) "Distribution" means a transfer of money or other property from a partnership to person on account of a transferable interest or in a person's capacity as a partner.

(A) The term includes:

(i) A redemption or other purchase by a partnership of a transferable interest; and

(ii) A transfer to a partner in return for the partner's relinquishment of any right to participate as a partner in the management or conduct of the partnership's business or have access to records or other information concerning the partnership's business; and

(B) The term does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(4) "Domestic partnership" means a partnership whose internal relations are governed by the laws of the District.

(5) "Foreign limited liability partnership" means a foreign partnership whose partners have limited liability for the debts, obligations, or other liabilities of the foreign partnership under a provision similar to § 29-603.06(c).

(A) Is formed under laws other than the laws of the District; and

(B) Has the status of a limited liability partnership under those laws.

(6) "Foreign partnership" means an unincorporated entity formed under the law of a jurisdiction other than the District which would be a partnership if formed under the law of the District.

(7) "Limited liability partnership" or "domestic limited liability partnership" means a partnership that has filed a statement of qualification under § 29-610.01 and does not have a similar statement in effect in any other jurisdiction.

(8) "Partner" means a person that:

(A) Has become a partner in a partnership under § 29-604.02 or was a partner in a partnership when the partnership became subject to this chapter under § 29-611.01; and

(B) Has not dissociated as a partner under § 29-606.01.

(9) "Partnership" means an association of 2 or more persons to carry on as co-owners a business for profit formed under § 29-602.02, predecessor law, or comparable law of another jurisdiction.

(10) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(11) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(12) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(13) “Registered foreign limited liability partnership” means a foreign limited liability partnership that is registered to do business in this state pursuant to a statement of registration filed by the Mayor.

(14) “Surviving partnership” means a domestic or foreign partnership into which one or more domestic or foreign partnerships are merged. A surviving partnership may preexist the merger or be created by the merger.

(15) “Transferable interest” means the right, as initially owned by a person in the person’s capacity as a partner, to receive distributions from a partnership in accordance with the partnership agreement, whether or not the person remains a partner or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

(16) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(2)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — Law 19-210, the “District of Columbia Official Code Title 29 Technical and Harmonizing Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-532. The Bill was adopted on first and second readings on July

10, 2012, and Oct. 2, 2012, respectively. Signed by the Mayor on Oct. 31, 2012, it was assigned Act No. 19-512 and transmitted to Congress for its review. D.C. Law 19-210 became effective on Mar. 5, 2013.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-601.03. Knowledge and notice.

(a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) Knows of it;

(2) Has received a notification of it; or

(3) Has reason to know it exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(d) A person receives a notification when the notification:

(1) Comes to the person’s attention; or

(2) Is duly delivered at the person’s place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in subsection (f) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual’s attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence shall not

require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership shall be effective immediately as knowledge by notice to, or receipt of a notification by, the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

(g) A person that is not a partner is deemed:

(1) To know of a limitation on authority to transfer real property as provided in § 29-603.03(e); and

(2) To have notice of:

(A) A partner's dissociation 90 days after a statement of dissociation under § 29-607.04 becomes effective; and

(B) A partnership's:

(i) Dissolution 90 days after a statement of dissolution under § 29-608.05 becomes effective;

(ii) Termination 90 days after a statement of termination under § 29-608.02 becomes effective; and

(iii) Participation in a merger, interest exchange, conversion, or domestication 90 days after articles of merger, interest exchange, conversion, or domestication under Chapter 2 of this title becomes effective.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(2)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added (g).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-601.04. Effect of partnership agreement; nonwaivable provisions.

(a) Except as otherwise provided in subsection (b) of this section, relations among the partners and between the partners and the partnership shall be governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter shall govern relations among the partners and between the partners and the partnership.

(b) A partnership agreement shall not:

(1) Vary the rights and duties under § 29-601.05, except to eliminate the duty to provide copies of statements to all of the partners;

(2) Unreasonably restrict the right of access to books and records under § 29-604.03(b);

(3) Eliminate the duty of loyalty under § 29-604.04(b) or § 29-606.03(b)(3), but:

(A) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(B) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) Unreasonably reduce the duty of care under § 29-604.04(c) or § 29-606.03(b)(3);

(5) Eliminate the obligation of good faith and fair dealing under § 29-604.04(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) Vary the power to dissociate as a partner under § 29-606.02(a), except to require the notice under § 29-606.01(1) to be in writing;

(7) Vary the right of a court to expel a partner in the events specified in § 29-606.01(5);

(8) Vary the requirement to wind up the partnership business in cases specified in § 29-608.01(4), (5), or (6);

(9) Vary the law applicable to a limited liability partnership under § 29-105.01(a);

(10) Restrict rights of third parties under this chapter;

(11) Vary the provisions of § 29-601.10;

(12) Vary the provisions of § 29-603.07;

(13) Relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of the law;

(14) Vary the right of a partner to approve a merger, interest exchange, conversion, or domestication; or

(15) Vary any requirement, procedure, or other provision of this title pertaining to:

(A) Registered agents; or

(B) The Mayor, including provisions pertaining to records authorized or required to be delivered to the Mayor for filing under this title.

(c) Subject to subsection (b) of this section, without limiting other terms that may be included in a partnership agreement, the following rules apply:

(1) The partnership agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(2) If not manifestly unreasonable, the partnership agreement may:

(A) Restrict or eliminate the aspects of the duty of loyalty stated in § 29-604.07(b);

(B) Identify specific types or categories of activities and affairs that do not violate the duty of loyalty;

(C) Alter the duty of care, but may not authorize willful or intentional misconduct or knowing violation of law; and

(D) Alter or eliminate any other fiduciary duty.

(d) The court shall decide as a matter of law any claim under subsection (b)(5) or (c)(2) of this section that a term of a partnership agreement is manifestly unreasonable. The court:

(1) Shall make its determination as of the time the challenged term became part of the partnership agreement and by considering only circumstances existing at that time; and

(2) May invalidate the term only if, in light of the purposes, activities, and affairs of the limited partnership, it is readily apparent that:

(A) The objective of the term is unreasonable; or

(B) The term is an unreasonable means to achieve the provision's objective.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(2)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “A” for “The” in the introductory language of (b); added (b)(11) through (b)(15) and made related changes; and added (c) and (d).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

CASE NOTES

Loans.

Under District of Columbia law, even if a loan was a proper form of payment under the partnership agreement, the size and terms of the loans copartner took from the partnership bore no relation to any services he contributed, and, thus, copartner breached the non-waivable du-

ties he owed to partner by reducing the partnership's capital stock almost to nothing as well as by misinforming partner about failure of the securities litigation the partnership was entered into to pursue. *Robertson v. Cartinhour*, 2012 WL 1164950 (C.A.D.C. 2012).

§ 29-601.05. Execution, filing, and recording of statements.

(a) A statement delivered to the Mayor for filing by a partnership shall be executed by at least 2 partners. Other statements shall be executed by a partner or other person authorized by this chapter.

(b) A person that delivers a statement to the Mayor for filing pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person shall not limit the effectiveness of the statement as to a person not a partner.

(c) A statement delivered to the Mayor for filing by a partnership shall be executed by at least 2 partners. Other statements shall be executed by a partner or other person authorized by this chapter. An individual who executes a statement shall personally declare under penalty of making false statements that the contents of the statement are accurate.

(d) A person authorized by this chapter to deliver a statement to the Mayor for filing may amend or cancel the statement by delivering filing an amendment or cancellation to the Mayor for filing that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(e) A person that delivers a statement to the Mayor for filing pursuant to

this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person shall not limit the effectiveness of the statement as to a person not a partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(2)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “making false statements” for “perjury” in (c).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-601.06. Governing law.

The internal affairs of a partnership and the liability of a partner as a partner for the debts, obligations, or other liabilities of the partnership are governed by:

(1) In the case of a limited liability partnership, the law of the District of Columbia; and

(2) In the case of a partnership that is not a limited liability partnership, the law of the state of the jurisdiction in which the partnership has its principal office.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(2)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-601.08. Partnership agreement; effect on partnership and person becoming partner; preformation agreement.

(a) A person that becomes a partner of a partnership is deemed to assent to the partnership agreement.

(b) A partnership is bound by and may enforce the partnership agreement, whether or not the partnership itself has manifested assent to the agreement.

(c) Two or more persons intending to become the initial partners of a partnership may make an agreement providing that upon the formation of the partnership the agreement will become the partnership agreement.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(2)(F), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes. — Application of Law 19-

210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-601.09. Partnership agreement; effect on third parties and relationship to records effective on behalf of partnership.

(a) A partnership agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a partnership and its partners to a person in the person's capacity as a transferee or person dissociated as a partner are governed by the partnership agreement. Subject only to a court order issued under § 29-605.04 to effectuate a charging order, an amendment to the partnership agreement made after a person becomes a transferee or is dissociated as a partner:

(1) Is effective with regard to any debt, obligation, or other liability of the partnership or its partners to the person in the person's capacity as a transferee or person dissociated as a partner; and

(2) Is not effective to the extent the amendment:

(A) Imposes a new debt, obligation, or other liability on the transferee or person dissociated as a partner; or

(B) Prejudices the rights under § 29-607.01 of a person that dissociated as a partner before the amendment was made.

(c) If a record delivered by a partnership to the Mayor for filing becomes effective under this chapter and contains a provision that would be ineffective under § 29-601.04(b) or (d)(2) if contained in the partnership agreement, the provision is ineffective in the record.

(d) Subject to subsection (c) of this section, if a record delivered by a partnership to the Mayor for filing becomes effective under this chapter and conflicts with a provision of the partnership agreement:

(1) The agreement prevails as to partners, persons dissociated as partners, and transferees; and

(2) The record prevails as to other persons to the extent they reasonably rely on the record.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(2)(F), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-601.10. Signing and filing pursuant to judicial order.

(a) If a person required by this chapter to sign a record or deliver a record to the Mayor for filing under this chapter does not do so, any other person that is aggrieved may petition the Superior Court to order:

(1) The person to sign the record;

(2) The person to deliver the record to the Mayor for filing; or

(3) The Mayor to file the record unsigned.

(b) If a petitioner under subsection (a) of this section is not the partnership

or foreign limited liability partnership to which the record pertains, the petitioner shall make the partnership a party to the action.

(c) A record filed under subsection (a)(3) of this section is effective without being signed.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(2)(F), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-601.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-601.11. Liability for inaccurate information in filed record.

(a) If a record delivered to the Mayor for filing under this title and filed by the Mayor contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(1) A person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(2) A partner, if:

(A) The record was delivered for filing on behalf of the partnership; and

(B) The partner had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the partner reasonably could have:

(i) Effected an amendment under § 29-610.01(h);

(ii) Filed a petition under § 29-601.10; or

(iii) Delivered to the Mayor for filing a statement of change under § 29-104.07 or a statement of correction under § 29-102.05.

(b) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of making false statements that the information stated in the record is accurate.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(2)(F), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-601.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

Subchapter III. Relations of Partners to Persons Dealing with Partnership.

§ 29-603.03. Statement of partnership authority.

(a) A partnership may deliver to the Mayor for filing a statement of partnership authority, which:

(1) Shall include:

(A) The name of the partnership;

(B) The street address of its principal office and of one office in District, if there is one;

(C) The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purposes of subsection (b) of this section; and

(D) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed pursuant to § 29-601.05(c) and states the name of the partnership, but does not contain all of the other information required by subsection (a) of this section, the statement shall nevertheless operate with respect to a person not a partner as provided in subsections (d) and (e) of this section.

(d) Except as otherwise provided in subsection (g) of this section, a filed statement of partnership authority shall supplement the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority shall be conclusive in favor of a person that gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority shall revive the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property shall be conclusive in favor of a person that gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority shall revive the previous grant of authority.

(e) A person not a partner shall be deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as otherwise provided in subsections (d) and (e) of this section and §§ 29-607.04 and 29-608.05, a person not a partner shall not be deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of partnership authority shall be canceled by operation of law 5 years after the date on which the statement, or the most recent amendment, was delivered to the Mayor for filing.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(3)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “deliver to the Mayor for filing” for “file” in (a); and substituted “delivered to the Mayor for filing” for “filed with the Mayor” in (g).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-603.04. Statement of denial.

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to § 29-603.03(b) may deliver to the Mayor for filing a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person’s authority or status as a partner. A statement of denial shall be a limitation on authority as provided in § 29-603.03(d) and (e).

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(3)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “deliver to the Mayor for filing” for “file.”

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-603.06. Partner’s liability.

(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners shall be liable jointly and severally for all debts, obligations, or other liabilities of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership shall not be personally liable for any partnership debt, obligation, or other liability incurred before the person’s admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, shall be solely the debt, obligation, or other liability of the partnership. A partner shall not be personally liable, directly or indirectly, by way of contribution or otherwise, for such a debt, obligation, or other liability solely by reason of being or so acting as a partner. This subsection shall apply notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under § 29-610.01(b).

(d) The failure of a limited liability partnership to observe any formalities relating to the exercise of its powers or management of its business is not a ground for imposing liability on any partner of the partnership for any debt, obligation, or other liability of the partnership.

(e) The cancellation or administrative revocation of a limited liability

partnership's statement of qualification does not affect this section's limitation on the liability of a partner for a debt, obligation, or other liability of the partnership incurred while the statement was in effect.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(3)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “debt, obligation, or other liability” or a variant thereof for “obligation” or a variant thereof in (a), (b), and (c); and added (d) and (e).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-603.07. Actions by and against partnership and partners.

(a) A partnership may sue and be sued in the name of the partnership.

(b) Except as otherwise provided in subsection (f) of this section, action may be brought against the partnership and, to the extent not inconsistent with § 29-603.06, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership shall not by itself be a judgment against a partner. A judgment against a partnership shall not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under § 29-603.06 and:

(1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) The partnership is a debtor in bankruptcy;

(3) The partner has agreed that the creditor need not exhaust partnership assets;

(4) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section shall apply to any partnership debt, obligation, or other liability resulting from a representation by a partner or purported partner under § 29-603.08.

(f) A partner is not a proper party to an action against a partnership if that partner is not personally liable for the claim under § 29-603.06.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(3)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “debt, obligation, or other liability” for “liability or obligation” in (e); and substituted “is not” for “shall not be” in (f).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter IV. Relations of Partners to Each Other and to Partnership.

§ 29-604.01. Partner’s rights and duties.

(a) Each partner shall be deemed to have an account that is:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner’s share of the partnership profits; and

(2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner’s share of the partnership losses.

(b) Each partner shall be entitled to an equal share of the partnership profits and shall be chargeable with a share of the partnership losses in proportion to the partner’s share of the profits.

(c) A partnership shall reimburse a partner for payments made, and indemnify a partner for liabilities incurred, by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) of this section shall constitute a loan to the partnership which accrues interest from the date of the payment or advance.

(f) A partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person’s former or present capacity as partner, if the claim, demand, debt, obligation, or other liability does not arise from the person’s breach of this section, § 29-604.07, or § 29-610.02.

(g) In the ordinary course of its business, a partnership may advance reasonable expenses, including attorney’s fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person’s former or present capacity as a partner, if the person promises to repay the partnership if the person ultimately is determined not to be entitled to be indemnified under subsection (f) of this section.

(h) A partnership may purchase or maintain insurance against liability arising from a partner’s status and asserted against or incurred by a partner acting in his or her capacity. Such insurance may be purchased and maintained even if, under § 29-601.04(b)(13), the partnership agreement does not permit limitation or elimination of partner liability.

- (i) Each partner shall have equal rights in the management and conduct of the partnership business.
- (j) A partner shall use or possess partnership property only on behalf of the partnership.
- (k) A partner shall not be entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.
- (l) A difference arising as to a matter in the ordinary course of business of a partnership shall be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement shall be undertaken only with the consent of all of the partners.
- (m) This section shall not affect the debts, liabilities, or other obligations of a partnership to other persons under § 29-603.01.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(4)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added (f), (g), and (h); repealed former (i) and (j); and redesignated former (f) through (h) as (i) through (k), respectively; and redesignated former (k) and (l) as (l) and (m), respectively.

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-604.02. Becoming partner.

- (a) Upon formation of a partnership under § 29-602.02(a), a person becomes a partner.
- (b) After formation of a partnership, a person becomes a partner:
 - (1) As provided in the partnership agreement;
 - (2) As a result of a transaction effective under Subchapter [subchapter] IX of this chapter or Chapter 2 of this title; or
 - (3) With the consent of all the partners.
- (c) A person may become a partner without:
 - (1) Acquiring a transferable interest; or
 - (2) Making or being obligated to make a contribution to the partnership.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(4)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section, which formerly read: “Distributions in kind. A partner shall have no right to receive, and shall not be required to accept, a distribution in kind.”

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-604.03. Form of contribution.

A contribution may consist of property transferred, services performed, or

other benefit provided to the partnership or an agreement to transfer property, perform services, or provide another benefit.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(4)(D), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes. — Section 2(f)(4)(C) of D.C. Law 19-210 redesignated former § 20-604.03 as § 29-604.06.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-604.04. Liability for contributions.

(a) A person's obligation to make a contribution to a partnership is not excused by the person's death, disability, or other inability to perform personally.

(b) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the partnership to contribute money equal to the value of the part of the contribution which has not been made.

(c) The obligation of a person to make a contribution may be compromised only by consent of all partners. If a creditor of a limited liability partnership extends credit or otherwise acts in reliance on an obligation described in subsection (a) of this section, without notice of a compromise under this subsection, the creditor may enforce the obligation.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(4)(D), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes. — Section 2(f)(4)(C) of D.C. Law 19-210 redesignated former § 20-604.04 as § 29-604.07.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-604.05. Distributions in kind; sharing of and right to distribution before dissolution.

(a) Any distributions made by a partnership before its dissolution and winding up must be in equal shares among partners, except to the extent necessary to comply with a transfer effective under § 29-605.03 or charging order in effect under § 29-605.04.

(b) A person has a right to a distribution before the dissolution and winding up of a partnership only if the partnership decides to make an interim distribution.

(c) A person does not have a right to demand or receive a distribution from a partnership in any form other than money. Except as otherwise provided in § 29-608.09, a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the partnership with respect to the distribution. However, the

partnership's obligation to make a distribution is subject to offset for any amount owed to the partnership by the partner or a person dissociated as partner on whose account the distribution is made.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(4)(D), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes. — Section 2(f)(4)(C) of D.C. Law 19-210 redesignated former § 20-604.05 as § 29-604.08.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-604.06. Partner's rights and duties beyond definite term or particular undertaking.

(a) A partnership shall keep its books and records, if any, at its principal office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(1) Without demand, any information concerning the partnership's business [activities] and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter; and

(2) On demand, any other information concerning the partnership's business [activities] and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, §§ 2(f)(4)(C), 2(f)(4)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 redesignated former § 20-604.03 as § 29-604.06; and apparently intended to substitute "activities" for "business" twice in (c).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes.

Section 2(f)(4)(C) of D.C. Law 19-210 redesignated former § 20-604.06 as § 29-604.09.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-604.07. General standards of partner's conduct.

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c) of this section.

(b) A partner's duty of loyalty to the partnership and the other partners include the following:

(1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business shall be limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and do other business with the partnership, and, as to each loan or transaction, the rights and obligations of the partner shall be the same as those of a person that is not a partner, subject to other applicable law.

(g) This section shall apply to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

(h) All the partners may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(i) It is a defense to a claim under subsection (b)(2) of this section and any comparable claim in equity or at common law that the transaction was fair to the partnership.

(j) If, as permitted by subsection (f) of this section or the partnership agreement, a partner enters into a transaction with the partnership which otherwise would be prohibited by subsection (b)(2) of this section, the partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, §§ 2(f)(4)(C), 2(f)(4)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 redesignated former § 20-604.04 as § 29-604.07; substituted "include" for "shall be limited to" in (b); substituted "does" for "shall" in (e); and added (h), (i), and (j).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-604.08. **Actions by partnership and partners.**

(a) A partnership shall be liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership shall be liable for the loss.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(4)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 redesignated former § 20-604.05 as § 29-604.08.

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-604.09. **Continuation of partnership beyond definite term or particular undertaking.**

(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners shall be liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership shall not be personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, shall be solely the obligation of the partnership. A partner shall not be personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection shall apply notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under § 29-610.01(b).

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(4)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 redesignated former § 20-604.06 as § 29-604.09.

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

*Subchapter V. Transferees and Creditors of Partner.***§ 29-605.02. Partner's transferable interest in partnership.**

Except as otherwise provided in subchapter IX of this chapter or Chapter 2 of this title, the only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest of a partner, whether or not transferable, shall be personal property.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(5)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “is” for the first occurrence of “shall be.”

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-605.03. Transfer of partner's transferable interest.

(a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

- (1) Is permissible;
- (2) Shall not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and
- (3) Shall not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership shall have a right to:

- (1) Receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
- (2) Receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and
- (3) Seek under § 29-608.01(6) a judicial determination that it is equitable to wind up the partnership business.

(c) In a dissolution and winding up, a transferee shall be entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(d) Upon transfer, the transferor shall retain the rights and duties of a partner other than the interest in distributions transferred.

(e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement

shall be ineffective as to a person having notice of the restriction at the time of transfer.

(g) If a partner transfers a transferable interest to a person that becomes a partner with respect to the transferred interest, the transferee is liable for the partner's obligations under §§ 29-604.04 and 29-610.03 known to the transferee when the transferee becomes a partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(5)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added (g).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-605.05. Power of legal representative of deceased partner.

If a partner dies, the deceased partner's legal representative may exercise:

- (1) The rights of a transferee provided in § 29-605.03(c); and
- (2) For purposes of settling the estate, the rights the deceased partner had under § 29-604.06.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(5)(C), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-601.02.

210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

Subchapter VI. Partner's Dissociation.

§ 29-606.01. Events causing partner's dissociation.

A partner shall be dissociated from a partnership when:

- (1) The partnership has notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;
- (2) An event agreed to in the partnership agreement as causing the partner's dissociation occurs;
- (3) The partner is expelled pursuant to the partnership agreement;
- (4) The partner is expelled by the unanimous vote of the other partners if:
 - (A) It is unlawful to carry on the partnership business with that partner;

(B) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(C) Within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation

of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(D) A partnership that is a partner has been dissolved and its business is being wound up;

(5) On application by the partnership or another partner, the partner is expelled by judicial determination because the partner:

(A) Engaged in wrongful conduct that adversely and materially affected the partnership business;

(B) Willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under § 29-604.04; or

(C) Engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) The partner:

(A) Became a debtor in bankruptcy;

(B) Executed an assignment for the benefit of creditors;

(C) Sought, consented to, or acquiesced in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(D) Failed, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failed within 90 days after the expiration of a stay to have the appointment vacated;

(7) In the case of a partner who is an individual:

(A) The partner dies;

(B) A guardian or general conservator is appointed for the partner; or

(C) There is a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, the trust's entire transferable interest in the partnership is distributed;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the partnership is distributed;

(10) A partner that is not an individual, partnership, corporation, trust, or estate dissolves and completes winding up; or

(11) The partnership participates in a merger, interest exchange, conversion, or domestication under Chapter 2 of this title or Subchapter [subchapter] IX of this chapter and, as a result, the person ceases to be a partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(6)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “dissolves and completes winding up; or” for “is terminated” in (10); added (11); and made a related change.

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-606.03. Effect of partner’s dissociation.

(a) If a partner’s dissociation results in a dissolution and winding up of the partnership business, subchapter VIII of this chapter shall apply; otherwise, subchapter VII of this chapter applies.

(b) Upon a partner’s dissociation:

(1) The partner’s right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in § 29-608.03;

(2) The partner’s duty of loyalty under § 29-604.04(b)(3) terminates; and

(3) The partner’s duty of loyalty under § 29-604.04(b)(1) and (2) and duty of care under § 29-604.04(c) continue only with regard to matters arising and events occurring before the partner’s dissociation, unless the partner participates in winding up the partnership’s business pursuant to § 29-608.03.

(c) A person’s dissociation alone does not discharge the person from a debt, obligation, or other liability to the partnership or to the other partners which the person incurred while a partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(6)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added (c).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VII. Partner’s Dissociation When Business Not Wound Up.

§ 29-607.02. Dissociated partner’s power to bind and liability to partnership.

(a) For 2 years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under subchapter IX of this chapter, shall be bound by an act of the dissociated partner which would have bound the partnership under § 29-603.01 before dissociation only if at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated partner was then a partner;

(2) Did not have notice of the partner’s dissociation; and

(3) Is not deemed to have had knowledge under § 29-603.03(e) or notice under § 29-607.04(c).

(b) A dissociated partner shall be liable to the partnership for any damage

caused to the partnership arising from a debt, obligation, or other liability incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a) of this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(7)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “a debt, obligation, or other liability” for “an obligation” in (b).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-607.03. Dissociated partner’s liability to other persons.

(a) A partner’s dissociation shall not of itself discharge the partner’s liability for a partnership debt, obligation, or other liability incurred before dissociation. A dissociated partner shall not be liable for a partnership debt, obligation, or other liability incurred after dissociation, except as otherwise provided in subsection (b) of this section.

(b) A partner that dissociates without resulting in a dissolution and winding up of the partnership business shall be liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under subchapter IX of this chapter, within 2 years after the partner’s dissociation, only if the partner is liable for the obligation under § 29-603.06 and at the time of entering into the transaction the other party:

- (1) Reasonably believed that the dissociated partner was then a partner;
- (2) Did not have notice of the partner’s dissociation; and
- (3) Is not deemed to have had knowledge under § 29-603.03(e) or notice under § 29-607.04(c).

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership debt, obligation, or other liability.

(d) A dissociated partner shall be released from liability for a partnership debt, obligation, or other liability if a partnership creditor, with notice of the partner’s dissociation but without the partner’s consent, agrees to a material alteration in the nature or time of payment of a partnership debt, obligation, or other liability.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(7)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “debt, obligation, or other liability” for “obligation” in (a), (c) and (d).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-607.05. Continued use of partnership name.

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the partnership's activities and affairs shall not of itself make the dissociated partner liable for a debt, obligation, or other liability of the partners or the partnership continuing the activities and affairs.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(7)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “partnership’s activities and affairs” for the first occurrence of “business”; substituted “a debt, obligation, or other liability” for “an obligation”; and substituted “activities and affairs” for the second occurrence of “business.”

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VIII. Dissolution and Winding Up.

§ 29-608.01. Events causing dissolution and winding up of partnership business.

A partnership is dissolved, and its activities and affairs shall be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, the partnership's having notice from a partner, other than a partner that is dissociated under § 29-606.01(2) through (10), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(2) In a partnership for a definite term or particular undertaking:

(A) Within 90 days after a partner's dissociation by death or otherwise under § 29-606.01(6) through (10) or wrongful dissociation under § 29-606.02(b), the express will of at least half of the remaining partners to wind up the partnership's activities and affairs, for which purpose a partner's rightful dissociation pursuant to § 29-606.02(b)(2)(A) constitutes the expression of that partner's will to wind up the partnership's activities and affairs;

(B) The express will of all of the partners to wind up the partnership's activities and affairs; or

(C) The expiration of the term or the completion of the undertaking;

(3) An event agreed to in the partnership agreement resulting in the winding up of the partnership activities and affairs;

(4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event shall be effective retroactively to the date of the event for purposes of this section;

(5) On application by a partner, a judicial determination that:

(A) The economic purpose of the partnership is likely to be unreasonably frustrated;

(B) Another partner has engaged in conduct relating to the partnership

activities and affairs which makes it not reasonably practicable to carry on the activities and affairs in partnership with that partner; or

(C) It is not otherwise reasonably practicable to carry on the partnership activities and affairs in conformity with the partnership agreement.

(6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership activities and affairs:

(A) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(B) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

(7) The passage of 90 consecutive days during which the partnership does not have at least 2 partners.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(8)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” or variants thereof for “business”; made related stylistic changes; and added (7).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes.

Section 2(f)(8)(A) of D.C. Law 19-210 substi-

tuted “Dissolution and Winding Up” for “Winding up Partnership Business” in the subchapter heading.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-608.02. Partnership continues after dissolution.

(a) Subject to subsection (b) of this section, a partnership shall continue after dissolution only for the purpose of winding up its activities and affairs. The partnership shall be terminated when the winding up of its activities and affairs is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its activities and affairs is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's activities and affairs wound up and the partnership terminated. In that event:

(1) The partnership shall resume carrying on its activities and affairs as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver shall be determined as if dissolution had never occurred; and

(2) The rights of a third party accruing under § 29-608.04(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(8)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “business” throughout (a) and (b).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-608.03. Right to wind up partnership.

(a) After dissolution, a partner that has not wrongfully dissociated may participate in winding up the partnership’s activities and affairs, but on application of any partner, partner’s legal representative, or transferee, the Superior Court, for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership’s activities and affairs.

(c) A person winding up a partnership’s activities and affairs may preserve the partnership activities or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership’s activities, dispose of and transfer the partnership’s property, discharge the partnership’s liabilities, distribute the assets of the partnership pursuant to § 29-608.07, settle disputes by mediation or arbitration, and perform other necessary acts.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(8)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “business” in (a) and (b) and for the first occurrence of “business” in (c); and substituted “activities” for the second and third occurrences of “business” in (c).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-608.04. Partner’s power to bind partnership after dissolution.

Subject to § 29-608.05, a partnership shall be bound by a partner’s act after dissolution that:

- (1) Is appropriate for winding up the partnership activities and affairs; or
- (2) Would have bound the partnership under § 29-603.01 before dissolution, if the other party to the transaction did not have notice of the dissolution.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(8)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “business” in (1).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-608.05. Statement of dissolution.

(a) After dissolution, a partner that has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its activities and affairs.

(b) A statement of dissolution shall cancel a filed statement of partnership authority for the purposes of § 29-603.03(d) and shall be a limitation on authority for the purposes of § 29-603.03(e).

(c) For the purposes of §§ 29-603.01 and 29-608.04, a person not a partner shall be deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in § 29-603.03(d) and (e) in any transaction, whether or not the transaction is appropriate for winding up the partnership activities and affairs.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(8)(F), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “business” in (a) and (d).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-608.06. Partner’s liability to other partners after dissolution.

(a) Except as otherwise provided in subsection (b) of this section and § 29-603.06, after dissolution, a partner shall be liable to the other partners for the partner’s share of any partnership liability incurred under § 29-608.04.

(b) A partner that, with knowledge of the dissolution, incurs a partnership liability under § 29-608.04(2) by an act that is not appropriate for winding up the partnership activities and affairs shall be liable to the partnership for any damage caused to the partnership arising from the liability.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(8)(G), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “business” in (b).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-608.07. Settlement of accounts and contributions among partners.

(a) In winding up a partnership's activities and affairs, the assets of the partnership, including the contributions of the partners required by this section, shall be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b) of this section.

(b) Each partner shall be entitled to a settlement of all partnership accounts upon winding up the partnership activities and affairs. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets shall be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under § 29-603.06.

(c) If a partner fails to contribute the full amount required under subsection (b) of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under § 29-603.06. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under § 29-603.06.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under § 29-603.06.

(e) The estate of a deceased partner shall be liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(8)(H), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "activities and affairs" for "business" in (a) and (b).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-608.08. Known claims against dissolved limited liability partnership.

(a) Except as otherwise provided in subsection (d) of this section, a dissolved limited liability partnership may give notice of a known claim under subsection (b) of this section, which has the effect provided in subsection (c) of this section.

(b) A dissolved limited liability partnership may, in a record, notify its known claimants of the dissolution. The notice must:

- (1) Specify the information required to be included in a claim;
- (2) State that a claim must be in writing and provide a mailing address to which the claim is to be sent;
- (3) State the deadline for receipt of a claim, which may not be less than 120 days after the date the notice is received by the claimant;
- (4) State that the claim will be barred if it is not received by the deadline; and

(5) Unless the partnership has been throughout its existence a limited liability partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any partner or person dissociated as a partner which is based on § 29-603.06.

(c) A claim against a dissolved limited liability partnership is barred if the notice requirements of subsection (b) of this section are met and:

- (1) The claim is not received by the specified deadline; or
- (2) If the claim is timely received but rejected by the limited liability partnership:

(A) The partnership causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the partnership to enforce the claim not later than 90 days after the date the claimant receives the notice; and

(B) The claimant does not commence the required action not later than 90 days after the claimant receives the notice.

(d) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(8)(I), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-601.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-608.09. Other claims against dissolved limited liability partnership.

(a) A dissolved limited liability partnership may publish notice of its dissolution and request persons having claims against the partnership to present them in accordance with the notice.

(b) A notice under subsection (a) of this section must:

- (1) Be published at least once in a newspaper of general circulation in the District of Columbia, or, if the principal office is not located in the District of

Columbia, in the appropriate court where the partnership's principal office is or was last located;

(2) Describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent;

(3) State that a claim against the partnership is barred unless an action to enforce the claim is commenced not later than 3 years after publication of the notice; and

(4) Unless the partnership has been throughout its existence a limited liability partnership, state that if a claim against the partnership is barred, any corresponding claim against any partner or person dissociated as a partner which is based on § 29-603.06 is also barred.

(c) If a dissolved limited liability partnership publishes a notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the partnership not later than 3 years after the publication date of the notice:

(1) A claimant that did not receive notice in a record under § 29-608.08;

(2) A claimant whose claim was timely sent to the partnership but not acted on; and

(3) A claimant whose claim is contingent on or based on an event occurring after the effective date of dissolution.

(d) A claim not barred under this section or § 29-608.08(c) may be enforced as follows:

(1) Against a dissolved limited liability partnership, a claim may be enforced to the extent of its undistributed assets;

(2) Except as otherwise provided in § 29-608.10(d), if assets of the partnership have been distributed after dissolution, a claim may be enforced against a partner or transferee to the extent of that person's proportionate share of the claim or of the partnership's assets distributed to the partner or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the person after dissolution; and

(3) A claim may be enforced against any person liable on the claim under § 29-603.06, 29-607.03, or 29-608.06.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(8)(I), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-608.10. Court proceedings.

(a) A dissolved limited liability partnership that has published a notice under § 29-608.09 may file an application with the Superior Court, or, if the principal office is not located in the District, an appropriate court where the office of its principal office is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have

not been made known to the partnership, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved partnership, are reasonably expected to arise after the effective date of dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under § 29-608.08(c).

(b) Not later than 10 days after the filing of an application under subsection (a) of this section, the dissolved limited liability partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the partnership.

(c) In any proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability partnership.

(d) A dissolved limited liability partnership that provides security in the amount and form ordered by the court under subsection (a) of this section satisfies the partnership's obligations with respect to claims that are contingent, have not been made known to the partnership, or are based on an event occurring after the effective date of dissolution, and the claims may not be enforced against a partner or transferee who receives assets in liquidation.

(e) This section applies only to a debt, obligation, or liability incurred while a partnership was a limited liability partnership.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(8)(I), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-601.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-608.11. Liability of partner and person dissociated as partner when claim against limited liability partnership is barred.

If a claim against a dissolved limited liability partnership is barred under § 29-608.08(c), 29-608.09(c), or 29-608.10, any corresponding claim under § 29-603.06, 29-607.03, or 29-608.06 is also barred.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(8)(I), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-601.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-608.12. Rescinding dissolution.

(a) A partnership may rescind its dissolution, unless a statement of termination applicable to the partnership is effective or the Superior Court has entered an order under § 29-608.01(5) or (6) dissolving the partnership.

(b) Rescinding dissolution under this section requires:

- (1) The consent of each partner;
- (2) If a statement of dissolution applicable to the partnership has been

filed by the Mayor but has not become effective, delivery to the Mayor for filing of a statement of withdrawal under § 29-102.04 applicable to the statement of dissolution; and

(3) If a statement of dissolution applicable to the partnership is effective, the delivery to the Mayor for filing of a statement of correction under § 29-102.05 stating that dissolution has been rescinded under this section.

(c) If a partnership rescinds its dissolution:

(1) The partnership resumes carrying on its activities and affairs as if dissolution had never occurred;

(2) Subject to paragraph (3) of this subsection, any liability incurred by the partnership after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and

(3) The rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(8)(I), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-601.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

Subchapter IX. Mergers and Internal Exchanges.

§ 29-609.05. Interest exchanges.

(a) One or more domestic or foreign partnerships may adopt a plan of interest exchange by which a domestic or foreign partnership acquires all of the outstanding partnership interests of one or more domestic partnerships in exchange for cash or securities of the acquiring domestic or foreign partnership, if:

(1) Each domestic or foreign partnership, the partnership interests of which are to be acquired under the plan of exchange, approves the plan of exchange in the manner prescribed in its partnership agreement; and

(2) Each acquiring domestic or foreign partnership takes all action that may be required by the laws of the state under which it was formed and as required by its partnership agreement in order to effect the exchange.

(b) A statement of interest exchange shall be signed on behalf of a domestic acquired entity and delivered to the Mayor for filing in accordance with § 29-102.03(a). When an interest exchange takes effect as provided in the plan of exchange:

(1) The partnership interest of each domestic partnership that is to be acquired under the plan of exchange shall be considered exchanged as provided in the plan of exchange;

(2) The former holders of the partnership interests exchanged under the plan of exchange shall be entitled only to the exchange rights provided in the plan of exchange; and

(3) The acquiring domestic or foreign partnership shall be entitled to all

rights, title, and interest with respect to the partnership interests so acquired and exchanged, subject to the provisions in the plan of exchange.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(f)(9), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “delivered to the Mayor for filing” for “filed with the Mayor” in (b).

Legislative history of Law 19-210. — See note to § 29-601.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter X. Limited Liability Partnership.

§ 29-610.02. Limitations on distributions by limited liability partnership.

(a) A limited liability partnership may not make a distribution, including a distribution under § 29-608.08, if after the distribution:

(1) The limited liability partnership would not be able to pay its debts as they become due in the ordinary course of the partnership’s activities and affairs; or

(2) Except as permitted in the partnership agreement, the limited liability partnership’s total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the partnership were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights of the partners and transferees upon dissolution and winding up whose preferential rights are superior to the right to receive distributions of the persons receiving the distribution.

(b) A limited liability partnership may base a determination that a distribution is not prohibited under subsection (a) of this section on:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) A fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (e) of this section, the effect of a distribution under subsection (a) of this section is measured:

(1) In the case of a distribution as defined in § 29-601.02(3), as of the earlier of the date:

(A) Money or other property is transferred or debt is incurred by the limited liability partnership; or

(B) The person entitled to the distribution ceases to own the interest or rights being acquired by the limited liability partnership in return for the distribution;

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of the date:

(A) The distribution is authorized, if the payment occurs not later than 120 days after that date; or

(B) The payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(d) A limited liability partnership's indebtedness to a partner or transferee incurred by reason of a distribution made in accordance with this section is at parity with the limited liability company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(e) A limited liability partnership's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of subsection (a) of this section if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that a payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(f) In measuring the effect of a distribution under § 29-608.07, the debts and liabilities of a dissolved limited liability partnership do not include any claim that has been disposed of under § 29-608.08, 29-608.09, or 29-608.10.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(10), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-610.03. Liability for improper distributions by limited liability partnership.

(a) If a partner of a limited liability partnership consents to a distribution made in violation of § 29-610.02 and in consenting to the distribution fails to comply with § 29-604.07, the partner is personally liable to the partnership for the amount of the distribution which exceeds the amount that could have been distributed pursuant to § 29-610.02.

(b) A person that receives a distribution knowing that the distribution violated of § 29-604.07 is personally liable to the limited liability partnership but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid in accordance with § 29-604.07.

(c) A person against which an action is commenced because the person is liable under subsection (a) of this section may:

(1) Implead any other person that is liable under subsection (a) of this section and seek to enforce a right of contribution from the person; and

(2) Implead any person that received a distribution in violation of subsection (b) of this section and seek to enforce a right of contribution from the person in the amount the person received in violation of subsection (b) of this section.

(d) An action under this section is barred if not commenced not later than 2 years after the distribution.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(10), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-601.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-610.04. Administrative revocation of statement of qualification.

(a) The Mayor may commence a proceeding under subsections (b) and (c) of this section to revoke the statement of qualification of a limited liability partnership administratively if the partnership does not:

(1) Pay any fee, tax, or penalty required to be paid to the Mayor not later than 6 months after it is due;

(2) Deliver a biennial report to the Mayor not later than 6 months after it is due; or

(3) Have a registered agent in this state for 60 consecutive days. “(b) If the Mayor determines that one or more grounds exist for administratively revoking a statement of qualification, the Mayor shall serve the partnership with notice in a record of the Mayor’s determination.

(c) If a limited liability partnership, not later than 60 days after service of the notice is effected under subsection (b) of this section, does not cure or demonstrate to the satisfaction of the Mayor the nonexistence of each ground determined by the Mayor, the Mayor shall administratively revoke the statement of qualification by signing a statement of administrative revocation that recites the grounds for revocation and the effective date of the revocation. The Mayor shall file the statement and serve a copy on the partnership pursuant to § 29-102.10.

(d) An administrative revocation under subsection (c) of this section affects only a partnership’s status as a limited liability partnership and is not an event causing dissolution of the partnership.

(e) The administrative revocation of a statement of qualification of a limited liability partnership does not terminate the authority of its registered agent.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(10), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-601.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-610.05. Reinstatement.

(a) A partnership whose statement of qualification has been revoked administratively under § 29-610.04 may apply to the Mayor for reinstatement of the statement of qualification not later than 2 years after the effective date of the revocation. The application must state:

(1) The name of the partnership at the time of the statement of qualification was administratively revoked, and, if needed, a different name that satisfies §§ 29-103.01 and 29-103.02;

(2) The address of the principal office of the partnership and the name and address of its registered agent;

(3) The effective date of administrative revocation of the partnership's statement of qualification; and

(4) That the grounds for revocation did not exist or have been cured.

(b) To have its statement of qualification reinstated, a partnership must pay all fees, taxes, and penalties that were due to the Mayor at the time of the administrative revocation and all fees, taxes, and penalties that would have been due to the Mayor while the partnership's statement of qualification was revoked administratively.

(c) If the Mayor determines that the application contains the information required by subsection (a) of this section, is satisfied that the information is correct, and determines that all payments required to be made to the Mayor by subsection (b) of this section have been made, the Mayor shall:

(1) Cancel the statement of revocation;

(2) Prepare a statement of reinstatement stating the Mayor's determination and the effective date of reinstatement;

(3) File the statement of reinstatement; and

(4) Serve a copy on the partnership.

(d) When reinstatement under this section is effective:

(1) It relates back to and takes effect as of the effective date of the administrative revocation; and

(2) The partnership's status as a limited liability partnership continues as if the revocation had never occurred, except for the rights of a person arising out of an act or omission in reliance on the revocation before the person knew or had notice of the reinstatement.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(10), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-601.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-610.06. Judicial review of denial of reinstatement.

(a) If the Mayor denies a partnership's application for reinstatement following administrative revocation of the partnership's statement of qualification, the Mayor shall serve the partnership with notice in a record that explains the reasons for the denial.

(b) A partnership may seek judicial review of a denial of reinstatement in Superior Court not later than 30 days after service of the notice of denial.

(Mar. 5, 2013, D.C. Law 19-210, § 2(f)(10), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-601.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

LIMITED PARTNERSHIPS

CHAPTER 7. LIMITED PARTNERSHIPS.

Subchapter I. General Provisions

- Sec.
29-701.02. Definitions.
29-701.04. Nature, purpose, and duration of entity.
29-701.05. Powers.
29-701.06. Governing law.
29-701.07. Effect of partnership agreement; nonwaivable provisions.
29-701.08. Partnership agreement; effect on limited partnership and person becoming partner; preformation agreement.
29-701.09. Partnership agreement; effect on third parties and relationship to records effective on behalf of limited partnership.
29-701.10. Required information.
29-701.11. Business transactions of partner with partnership.
29-701.12. Dual capacity.
29-701.13. Consent and proxies of partners.

Subchapter II. Formation; Certificate of Limited Partnership and Other Filings

- 29-702.01. Formation of limited partnership; certificate of limited partnership.
29-702.02. Amendment or restatement of certificate.
29-702.04. Signing of records.
29-702.06. Liability for inaccurate information in filed record.

Subchapter III. Limited Partners

- 29-703.01. Becoming limited partner.
29-703.02. No agency power of limited partner as limited partner.
29-703.03. No liability as limited partner for limited partnership obligations.
29-703.04. Right of limited partner and former limited partner to information.
29-703.05. Limited duties of limited partners.

Subchapter IV. General Partners

- 29-704.01. Becoming general partner.
29-704.02. General partner agent of limited partnership.
29-704.03. Limited partnership liable for general partner's actionable conduct.
29-704.04. General partner's liability.
29-704.06. Management rights of general partner.
29-704.08. General standards of general partner's conduct.
29-704.09. Reimbursement, indemnification, advancement, and insurance.

Subchapter V. Contributions and Distributions

- Sec.
29-705.01. Form of contribution.
29-705.02. Liability for contributions.
29-705.06. Distribution in kind.
29-705.07. Right to distribution.
29-705.08. Limitations on distribution.

Subchapter VI. Dissociation

- 29-706.01. Dissociation as limited partner.
29-706.02. Effect of dissociation as limited partner.
29-706.03. Dissociation as general partner.
29-706.04. Person's power to dissociate as general partner; wrongful dissociation.
29-706.05. Effect of dissociation as general partner.
29-706.06. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner.
29-706.07. Liability to other persons of person dissociated as general partner.

Subchapter VII. Transferable Interests and Rights of Transferees and Creditors

- 29-707.01. Partner's transferable interest.
29-707.02. Transfer of partner's transferable interest.
29-707.03. Charging order.
29-707.04. Power of legal representative of deceased partner.

Subchapter VIII. Dissolution

- 29-708.01. Nonjudicial dissolution.
29-708.02. Judicial dissolution.
29-708.03. Winding up.
29-708.04. Power of general partner and person dissociated as general partner to bind partnership after dissolution.
29-708.05. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partner.
29-708.09. Disposition of assets; when contributions required.
29-708.10. Rescinding dissolution.
29-708.11. Court proceedings.

Subchapter IX. Actions by Partners

- 29-709.01. Direct action by partner.
29-709.05. Proceeds and expenses.
29-709.06. Special litigation committee.

Subchapter I. General Provisions.

§ 29-701.02. Definitions.

For the purposes of this chapter, the term:

(1) “Certificate of limited partnership” means the certificate required by § 29-702.01. The term includes the certificate as amended or restated.

(2) “Contribution”, except in the phrase “right of contribution”, means any benefit described in § 705.01 provided by a person to a limited partnership to become a partner or in the person’s capacity as a partner.

(3) “Distribution” means a transfer of money or other property from a limited partnership to a person on account of a transferable interest or in the person’s capacity as a partner.

(A) The term includes:

(i) A redemption or other purchase by a limited partnership of a transferable interest; and

(ii) A transfer to a partner in return for the partner’s relinquishment of any right to participate as a partner in the management or conduct of the partnership’s activities and affairs or to have access to records or other information concerning the partnership’s activities and affairs; and

(B) The term does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(4) “Foreign limited liability limited partnership” means a foreign limited partnership whose general partners have limited liability for the debts, obligations, or other liabilities of the foreign limited partnership under a provision similar to § 29-704.04(c).

(5) “Foreign limited partnership” means a partnership formed under the laws of a jurisdiction other than the District which would be a limited partnership if formed under the laws of the District. The term includes a foreign limited liability limited partnership.

(6) “General partner” means:

(A) With respect to a limited partnership, a person that:

(i) Becomes a general partner under § 29-704.01; or was a general partner in a limited partnership when the limited partnership became subject to this chapter under § 29-711.01(a) or (b); and

(ii) Has not dissociated as a general partner under § 29-706.03; and]

(B) With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.

(7) “Limited liability limited partnership”, except in the phrase “foreign limited liability limited partnership”, means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

(8) “Limited partner” means:

(A) With respect to a limited partnership, a person that:

(i) Becomes a limited partner under § 29-703.01; or was a limited

partner in a limited partnership when the limited partnership became subject to this chapter under § 29-711.01(a) or (b); and

(ii) Has not dissociated as a limited partner under § 29-706.01[; and]

(B) With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(9) “Limited partnership”, except in the phrases “foreign limited partnership” and “foreign limited liability limited partnership”, or “domestic limited partnership”, means an entity, having one or more general partners and one or more limited partners, which is formed under this chapter by 2 or more persons or becomes subject to this chapter under subchapter X of this chapter, Chapter 2 of this title, or § 29-711.01(a) or (b). The term includes a limited liability limited partnership.

(10) “Partner” means a limited partner or general partner.

(11) “Partnership agreement” means the partners’ agreement, whether oral, implied, in a record, or in any combination, concerning the matters described in § 29-701.07. The term includes the agreement as amended or restated.

(12) “Person dissociated as a general partner” means a person dissociated as a general partner of a limited partnership.

(13) “Required information” means the information that a limited partnership is required to maintain under § 29-701.08.

(14) “Transferable interest” means the right, as initially owned by a person in the person’s capacity as a partner, to receive distributions from a limited partnership in accordance with the partnership agreement, whether or not the person remains a partner or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

(15) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner. The term includes a person that owns a transferable interest under § 29-706.02(a)(3) or § 29-706.05(a)(5).

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(2)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — Law 19-210, the “District of Columbia Official Code Title 29 Technical and Harmonizing Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-532. The Bill was adopted on first and second readings on July

10, 2012, and Oct. 2, 2012, respectively. Signed by the Mayor on Oct. 31, 2012, it was assigned Act No. 19-512 and transmitted to Congress for its review. D.C. Law 19-210 became effective on Mar. 5, 2013.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-701.04. Nature, purpose, and duration of entity.

(a) A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

(b) A limited partnership may be formed under this chapter for any lawful purpose, regardless of whether for profit.

(c) A limited partnership shall have a perpetual duration.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(2)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210, in (b), substituted “formed” for “organized” and added “regardless of whether for profit.”

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-701.05. Powers.

A limited partnership shall have the powers to do all things necessary or convenient to carry on its activities or affairs, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(2)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities or affairs” for “activities.”

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-701.06. Governing law.

The law of the District governs the internal affairs of a limited partnership and the liability of a partner for the debts, obligations, or other liabilities of a limited partnership.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(2)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-701.07. Effect of partnership agreement; nonwaivable provisions.

(a) Except as otherwise provided in subsection (b) of this section, the partnership agreement shall govern relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter shall govern relations among the partners and between the partners and the partnership.

(b) A partnership agreement shall not:

(1) Vary a limited partnership's power under § 29-701.05 to sue, be sued, and defend in its own name;

(2) Vary the law applicable to a limited partnership under § 29-701.06;

(3) Vary the requirements of § 29-702.04;

(4) Vary the information required under § 29-701.10 or unreasonably restrict the right to information under § 29-703.04 or § 29-704.07, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(5) Eliminate the duty of loyalty under § 29-704.08, but the partnership agreement may:

(A) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(B) Specify the number or percentage of partners which may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(6) Relieve or exonerate a person from liability for conduct involving bad faith, willful misconduct, or recklessness;

(7) Eliminate the contractual obligation of good faith and fair dealing under §§ 29-703.05(b) and 29-704.08(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(8) Vary the power of a person to dissociate as a general partner under § 29-706.04(a), except to require that the notice under § 29-706.03(1) be in a record;

(9) Vary the power of a court to decree dissolution in the circumstances specified in § 29-708.02;

(10) Vary the requirement to wind up the partnership's activities and affairs as specified in § 29-708.03;

(11) Unreasonably restrict the right of a partner to maintain an action under subchapter IX of this chapter;

(12) Restrict the right of a partner:

(A) Under § 29-710.06(a) to approve a merger; or

(B) Under Chapter 2 of this title to approve a merger, interest exchange, conversion, or domestication;

(13) Relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of the law;

(14) Restrict rights under this chapter of a person other than a partner or a transferee;

(15) Vary the right of a general partner under § 29-704.06(b)(2) to consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership;

(16) Vary the provisions of § 29-709.06, except that the partnership agreement may provide that the partnership may not have a special litigation committee;

(17) Vary any requirement, procedure, or other provision of this title pertaining to:

(A) Registered agents; or

(B) The Mayor, including provisions pertaining to records authorized or required to be delivered to the Mayor for filing under this title.

(c) Subject to subsection (b) of this section, but without limiting other terms that may be included in a partnership agreement, the following rules apply:

(1) The partnership agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(2) If not manifestly unreasonable, the partnership agreement may:

(A) Restrict or eliminate aspects of the duty of loyalty stated in § 29-704.08(b);

(B) Identify specific types or categories of activities and affairs that do not violate the duty of loyalty;

(C) Alter the duty of care, but may not authorize willful or intentional misconduct or knowing violation of law; and

(D) Alter or eliminate any other fiduciary duty.

(d) The court shall decide as a matter of law any claim made under subsection (b)(7) or (c)(2) of this section that a term of a partnership agreement is manifestly unreasonable. The court:

(1) Shall make its determination as of the time the challenged term became part of the partnership agreement and by considering only circumstances existing at that time; and

(2) May invalidate the term only if, in light of the purposes, activities, and affairs of the limited partnership, it is readily apparent that:

(A) The objective of the term is unreasonable; or

(B) The term is an unreasonable means to achieve the provision's objective.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(2)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote (b); and added (c) and (d).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-701.08. Partnership agreement; effect on limited partnership and person becoming partner; preformation agreement.

(a) A limited partnership is bound by and may enforce the partnership agreement, whether or not the partnership has itself manifested assent to the partnership agreement.

(b) A person that becomes a partner of a limited partnership is deemed to assent to the partnership agreement.

(c) Two or more persons intending to become the initial partners of a limited partnership may make an agreement providing that upon the formation of the partnership the agreement will become the partnership agreement.

(Mar. 5, 2013, D.C. Law 19-210, § 2(g)(2)(G), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes. — Section 2(g)(2)(F) of D.C. Law 19-210 redesignated former § 20-701.08 as § 29-701.10.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-701.09. Partnership agreement; effect on third parties and relationship to records effective on behalf of limited partnership.

(a) A partnership agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited partnership and its partners to a person in the person's capacity as a transferee or person dissociated as a partner are governed by the partnership agreement. Subject only to a court order issued under § 29-707.03(b)(2) to effectuate a charging order, an amendment to the partnership agreement made after a person becomes a transferee or is dissociated as a partner:

(1) Is effective with regard to any debt, obligation, or other liability of the limited partnership or its partners to the person in the person's capacity as a transferee or person dissociated as a partner; and

(2) Is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a partner.

(c) If a record delivered by a limited partnership to the Mayor for filing becomes effective and contains a provision that would be ineffective under § 29-701.07(b) or (c)(2) if contained in the partnership agreement, the provision is ineffective in the record.

(d) Subject to subsection (c) of this section, if a record delivered by a limited partnership to the Mayor for filing becomes effective and conflicts with a provision of the partnership agreement:

(1) The agreement prevails as to partners, persons dissociated as partners, and transferees; and

(2) The record prevails as to other persons to the extent they reasonably rely on the record.

(Mar. 5, 2013, D.C. Law 19-210, § 2(g)(2)(G), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes. — Section 2(g)(2)(F) of D.C.

Law 19-210 redesignated former § 20-701.09 as § 29-701.11.

Application of Law 19-210: Section 7 of D.C.

Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-701.10. Required information.

A limited partnership shall maintain at its principal office the following information:

(1) A current list in a record showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(2) A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

(3) A copy of any articles of merger filed under subchapter X of this chapter and of any statement of merger, interest exchange, conversion, or domestication filed under Chapter 2 of this title;

(4) A copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years;

(5) A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;

(6) A copy of any financial statement of the limited partnership for the 3 most recent years;

(7) A copy of the 3 most recent biennial reports delivered by the limited partnership to the Mayor pursuant to § 29-102.11;

(8) A copy of any record made by the limited partnership during the past 3 years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and

(9) Unless contained in a partnership agreement made in a record, a record stating:

(A) A description of the agreed value of contributions other than money made and agreed to be contributed by each partner;

(B) The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

(C) For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

(D) Any events upon the happening of which the limited partnership is to be dissolved and its activities or affairs wound up.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, §§ 2(g)(2)(F), 2(g)(2)(H), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 redesignated former § 29-701.08 as § 29-701.10; and substituted “A description of the agreed value of contributions other than money made” for “The amount of cash, and a description and statement of the agreed value of the other benefits,

contributed” in (9)(A); and substituted “activities or affairs” for “activities” in (9)(D).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Section 2(g)(2)(F) of D.C. Law 19-210 redesignated former § 20-701.10 as § 29-701.12.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-701.11. Business transactions of partner with partnership.

A partner may lend money to and do other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(2)(F), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 redesignated former § 29-701.09 as § 29-701.11.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Section 2(g)(2)(F) of D.C. Law 19-210 redesignated former § 20-701.11 as § 29-701.13.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-701.12. Dual capacity.

A person may be both a general partner and a limited partner. A person that is both a general and limited partner shall have the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person shall be subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person shall be subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(2)(F), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 redesignated former § 29-701.10 as § 29-701.12.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-701.13. Consent and proxies of partners.

Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney in fact.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(2)(F), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 redesignated former § 29-701.11 as § 29-701.13.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter II. Formation; Certificate of Limited Partnership and Other Filings.

§ 29-702.01. Formation of limited partnership; certificate of limited partnership.

(a) In order for a limited partnership to be formed, a certificate of limited partnership shall be delivered to the Mayor for filing. The certificate shall state:

- (1) The name of the limited partnership, which shall comply with §§ 29-103.01 and 29-103.02(d);
- (2) The information required by § 29-104.04;
- (3) The name and the street and mailing address of each general partner and the limited partnership's principal office;
- (4) Whether the limited partnership is a limited liability limited partnership; and
- (5) Any additional information required by subchapter X of this chapter.

(b) A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in § 29-701.07(b) in a manner inconsistent with that section.

(c) If there has been substantial compliance with subsection (a) of this section, subject to subchapter II of Chapter 1 of this title, a limited partnership is formed when:

- (1) The certificate of limited partnership has become effective;
- (2) At least 2 persons have become partners;
- (3) At least one person has become a general partner; and
- (4) At least one person has become a limited partner.

(d) Subject to subsection (b) of this section, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership, or with a filed statement of dissociation, termination, or change, or with filed articles of merger, or with a statement of merger, interest exchange, conversion, or domestication filed under Chapter 2 of this title:

- (1) The partnership agreement shall prevail as to partners and transferees; and
- (2) The filed document shall prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(3)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “general partner and the limited partnership’s principal office” for “general partner” in (a)(3); and rewrote (c).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-702.02. Amendment or restatement of certificate.

(a) To amend its certificate of limited partnership, a limited partnership shall deliver to the Mayor for filing an amendment stating:

- (1) The name of the limited partnership;
- (2) The date of filing of its initial certificate; and
- (3) The changes the amendment makes to the certificate as most recently amended or restated.

(b) A limited partnership shall promptly deliver to the Mayor for filing an amendment to a certificate of limited partnership to reflect the:

- (1) Admission of a new general partner;
- (2) Dissociation of a person as a general partner; or
- (3) Appointment of a person to wind up the limited partnership’s activities or affairs under § 29-708.03(c) or (d).

(c) A general partner that knows that any information in a filed certificate of limited partnership was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances shall promptly:

- (1) Cause the certificate to be amended; or
- (2) If appropriate, deliver to the Mayor for filing a statement of correction pursuant to § 29-102.05 or § 29-104.07.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.

(e) A restated certificate of limited partnership may be delivered to the Mayor for filing in the same manner as an amendment.

(f) Subject to § 29-102.03, an amendment or restated certificate shall be effective when filed by the Mayor.

(g) A certificate of limited partnership may also be amended by filing articles of merger under subchapter X of this chapter or a statement of merger, interest exchange, conversion, or domestication under Chapter 2 of this title.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(3)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities or affairs” for “activities” in (b)(3); and substituted “inaccurate” for “false” in (c).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-702.04. Signing of records.

(a) Each record delivered to the Mayor for filing pursuant to this chapter shall be signed in the following manner:

(1) An initial certificate of limited partnership shall be signed by all general partners listed in the certificate.

(2) An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership shall be signed by all general partners listed in the certificate.

(3) An amendment designating as general partner a person admitted under § 29-708.01(3)(B) following the dissociation of a limited partnership's last general partner shall be signed by that person.

(4) An amendment required by § 29-708.03(c) following the appointment of a person to wind up the dissolved limited partnership's activities or affairs shall be signed by that person.

(5) Any other amendment shall be signed by:

(A) At least one general partner listed in the certificate;

(B) Each other person designated in the amendment as a new general partner; and

(C) Each person that the amendment indicates has dissociated as a general partner, unless:

(i) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or

(ii) The person has previously delivered to the Mayor for filing a statement of dissociation.

(6) A restated certificate of limited partnership shall be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other paragraph of this subsection, the certificate shall be signed in a manner that satisfies that paragraph.

(7) A statement of termination shall be signed by all general partners listed in the certificate or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to § 29-708.03(c) or (d) to wind up the dissolved limited partnership's activities or affairs.

(8) Articles of merger shall be signed as provided in § 29-710.04(a).

(9) Any other record delivered on behalf of a limited partnership to the Mayor for filing shall be signed by at least one general partner listed in the certificate.

(10) A statement by a person pursuant to § 29-706.05(a)(4) stating that the person has dissociated as a general partner shall be signed by that person.

(11) A statement of withdrawal by a person pursuant to § 29-703.06 shall be signed by that person.

(12) A record delivered on behalf of a foreign limited partnership to the Mayor for filing shall be signed by at least one general partner of the foreign limited partnership.

(13) Any other record delivered on behalf of any person to the Mayor for filing shall be signed by that person.

(b) Any person may sign by an attorney in fact any record to be filed pursuant to this chapter.

(c) Each record delivered to the Mayor for filing pursuant to Chapter 2 of this title shall be signed by each general partner listed in the certificate of limited partnership.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(3)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities or affairs” for “activities” in (a)(4) and (a)(7).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-702.06. Liability for inaccurate information in filed record.

(a) If a record delivered to the Mayor for filing under this chapter and filed by the Mayor contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(1) A person that signed the record, or caused another to sign it on the person’s behalf, and knew the information to be inaccurate at the time the record was signed; and

(2) A general partner that has notice that the information was inaccurate when the record was filed or has become inaccurate because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under § 29-702.02, file a petition pursuant to § 29-702.05, or deliver to the Mayor for filing a statement of change pursuant to § 29-104.07 or a statement of correction pursuant to § 29-102.05.

(b) Signing a record authorized or required to be filed under this chapter shall constitute an affirmation under the penalties of making false statements that the facts stated in the record are true.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(3)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “inaccurate” for “false” in (a) and in the section heading; and substituted “making false statements” for “perjury” in (b).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter III. Limited Partners.

§ 29-703.01. Becoming limited partner.

(a) A person becomes a limited partner:

(1) Upon formation as provided in the partnership agreement; or

(2) After formation, a person becomes a limited partner:

(A) As provided in the partnership agreement;

(B) As the result of a merger under subchapter X of this chapter or a transaction under Chapter 2 of this title;

(C) With the consent of all the partners; or

(D) As provided in § 29-708.01(4).

(b) A person may become a limited partner without:

(1) Acquiring a transferable interest; or

(2) Making or being obligated to make a contribution to the limited partnership.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(4)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-703.02. No agency power of limited partner as limited partner.

(a) A limited partner is not an agent of a limited partnership solely by reason of being a limited partner.

(b) A person's status as a limited partner does not prevent or restrict the law, other than in this title, from imposing liability on a limited partnership because of the person's conduct.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(4)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-703.03. No liability as limited partner for limited partnership obligations.

(a) A debt, obligation, or other liability of a limited partnership, whether arising in contract, tort, or otherwise, is not attributable to a limited partner. A limited partner shall not be personally liable, directly or indirectly, by way of contribution or otherwise, for an a debt, obligation, or other liability of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

(b) The failure of a limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a limited partner for a debt, obligation, or other liability of the partnership.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(4)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-703.04. Right of limited partner and former limited partner to information.

(a) On 10 days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office. The limited partner need not have any particular purpose for seeking the information.

(b) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and affairs and financial condition of the limited partnership and other information regarding the activities and affairs of the limited partnership as is just and reasonable if:

(1) The limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;

(2) The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(3) The information sought is directly connected to the limited partner's purpose.

(c) Within 10 days after receiving a demand pursuant to subsection (b) of this section, the limited partnership in a record shall inform the limited partner that made the demand:

(1) What information the limited partnership will provide in response to the demand;

(2) When and where the limited partnership will provide the information; and

(3) If the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

(d) Subject to subsection (f) of this section, a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office if:

(1) The information pertains to the period during which the person was a limited partner;

(2) The person seeks the information in good faith; and

(3) The person meets the requirements of subsection (b) of this section.

(e) The limited partnership shall respond to a demand made pursuant to subsection (d) of this section in the same manner as provided in subsection (c) of this section.

(f) If a limited partner dies, § 29-707.04 shall apply.

(g) A limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reason-

ableness of a restriction under this subsection, the limited partnership shall have the burden of proving reasonableness.

(h) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(i) Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the limited partner's decision that the limited partnership knows.

(j) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (g) of this section or by the partnership agreement shall apply both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

(k) The rights stated in this section shall not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(4)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” throughout (b).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-703.05. Limited duties of limited partners.

(a) A limited partner shall not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

(b) A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(c) A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest.

(d) If a limited partner enters into a transaction with a limited partnership, the limited partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(4)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “does” for “shall” in (c); and added (d).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter IV. General Partners.

§ 29-704.01. Becoming general partner.

(a) A person becomes a general partner:

(1) Upon formation of a limited partnership, as agreed among the persons that are to be the initial partners; and

(2) After formation:

(A) As provided in the partnership agreement;

(B) Under § 29-708.01(3)(B) following the dissociation of a limited partnership’s last general partner;

(C) As the result of a merger under subchapter X of this chapter or a transaction under Chapter 2 of this title; or

(D) With the consent of all the partners.

(3) As the result of a merger under subchapter X of this chapter or a transaction under Chapter 2 of this title; or

(4) With the consent of all the partners.

(b) A person may become a general partner without:

(1) Acquiring a transferable interest; or

(2) Making or being obligated to make a contribution to the partnership.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(4)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added the (a) designation; rewrote (a)(1) and (a)(2); and added (b).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-704.02. General partner agent of limited partnership.

(a) Each general partner shall be an agent of the limited partnership for the purposes of its activities and affairs.

(b) An act of a general partner, including the signing of a record in the partnership’s name, for apparently carrying on in the ordinary course the limited partnership’s activities or affairs or activities or affairs of the kind carried on by the limited partnership shall bind the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under § 29-701.03(d) that the general partner lacked authority.

(c) An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership’s activities or affairs or activities or

affairs of the kind carried on by the limited partnership shall bind the limited partnership only if the act was actually authorized by all the other partners.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(4)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” in (a); and substituted “activities or affairs or activities or affairs” for “activities or activities” in (b) and (c).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-704.03. Limited partnership liable for general partner’s actionable conduct.

(a) A limited partnership shall be liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities or affairs of the limited partnership or with authority of the limited partnership.

(b) If, in the course of the limited partnership’s activities or affairs or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership shall be liable for the loss.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(4)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities or affairs” for “activities” in (a) and (b).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-704.04. General partner’s liability.

(a) Except as otherwise provided in subsections (b) and (c) of this section, all general partners shall be liable jointly and severally for all debts, obligations, and other liabilities of the limited partnership unless otherwise agreed by the claimant or provided by law.

(b) A person that becomes a general partner of an existing limited partnership is not be personally liable for a debt, obligation, or other liability of a limited partnership incurred before the person became a general partner.

(c) A debt, obligation, or other liability of a limited partnership incurred while the limited partnership is a limited partnership, whether arising in contract tort, or otherwise, and that is incurred while the limited partnership is a limited liability partnership, is solely an obligation of the limited partnership. A general partner shall not be personally liable, directly or

indirectly, by way of contribution or otherwise, for such debt, obligation, or other liability solely by reason of being or acting as a general partner. This subsection shall apply despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under § 29-704.06(b)(2).

(d) The failure of a limited liability limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a general partner of the limited liability limited partnership for a debt, obligation, or liability of the partnership.

(e) An amendment of a certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership does not affect the limitation in this section on the liability of a general partner for a debt, obligation, or other liability of the limited partnership incurred before the amendment became effective.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(4)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-704.06. Management rights of general partner.

(a) Each general partner shall have equal rights in the management and conduct of the limited partnership's activities and affairs. Except as expressly provided in this chapter, any matter relating to the activities and affairs of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

(b) The consent of each partner shall be necessary to:

(1) Amend the partnership agreement;

(2) Amend the certificate of limited partnership to add or, subject to § 29-710.06, delete a statement that the limited partnership is a limited liability limited partnership; and

(3) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

(c) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

(d) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(e) A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under subsection (c) or (d) of this section

shall constitute a loan to the limited partnership which accrues interest from the date of the payment or advance.

(f) A general partner shall not be entitled to remuneration for services performed for the partnership.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(4)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” twice in (a).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-704.08. General standards of general partner’s conduct.

(a) The only fiduciary duties that a general partner shall have to the limited partnership and the other partners are the duties of loyalty and care under subsections (b) and (c) of this section.

(b) A general partner’s duty of loyalty to the limited partnership and the other partners shall be limited to the following:

(1) To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership’s activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

(2) To refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership’s activities as or on behalf of a party having an interest adverse to the limited partnership; and

(3) To refrain from competing with the limited partnership in the conduct or winding up of the limited partnership’s activities.

(c) A general partner’s duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership’s activities shall be limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A general partner shall not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner’s conduct furthers the general partner’s own interest.

(f) All the partners of a limited partnership may authorize or ratify, after full disclosure of all material facts, a specific act or transaction by a general partner that otherwise would violate the duty of loyalty.

(g) It is a defense to a claim under subsection (b)(2) of this section and any comparable claim in equity or at common law that the transaction was fair to the limited partnership.

(h) If, as permitted by subsection (f) of this section or the partnership agreement, a general partner enters into a transaction with the limited partnership which otherwise would be prohibited by subsection (b)(2) of this section, the general partner's rights and obligations arising from the transaction are the same as those of a person that is not a general partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(4)(F), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added (f), (g), and (h).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-704.09. Reimbursement, indemnification, advancement, and insurance.

(a) A limited partnership shall reimburse a general partner for any payment made by the general partner in the course of the general partner's activities on behalf of the partnership, if the general partner complied with §§ 29-704.06, 29-704.08, and 29-705.09 in making the payment.

(b) A limited partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a general partner, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of § 29-704.06, [§] 29-704.08, or [§] 29-705.09.

(c) In the ordinary course of its activities and affairs, a limited partnership may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a general partner, if the person promises to repay the partnership if the person ultimately is determined not to be entitled to be indemnified under subsection (b) of this section.

(d) A limited partnership may purchase and maintain insurance on behalf of a general partner against liability asserted against or incurred by the general partner in that capacity or arising from that status even if, under § 29-701.07(b)(6), the partnership agreement could not eliminate or limit the person's liability to the partnership for the conduct giving rise to the liability.

(Mar. 5, 2013, D.C. Law 19-210, § 2(g)(4)(G), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-701.02.

210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

Subchapter V. Contributions and Distributions.

§ 29-705.01. Form of contribution.

A contribution of a partner may consist of property transferred, services

performed, or another benefit provided to the partnership or an agreement to transfer property, perform services, or provide another benefit to the partnership.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(6)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “property transferred, services performed, or another benefit provided to the partnership or an agreement to transfer property, perform services, or provide another benefit to the partnership” for “tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory

notes, other agreements to contribute cash or property, and contracts for services to be performed.”

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-705.02. Liability for contributions.

(a) A partner’s obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership shall not be excused by the partner’s death, disability, or other inability to perform personally.

(b) If a partner does not make a promised non-monetary contribution, the partner shall be obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution which has not been made.

(c) The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership which extends credit or otherwise acts in reliance on an obligation described in subsection (a) of this section, without notice of any compromise under this subsection, may enforce the original obligation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(6)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “contributions” for “contribution” in the section heading.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-705.06. Distribution in kind.

A partner shall not have a right to demand or receive any distribution from a limited partnership in any form other than money. Subject to § 29-708.09(b), a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner’s share of distributions.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(6)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “money” for “cash.”

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-705.07. Right to distribution.

If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership’s obligation to make a distribution shall be subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(6)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “If” for “When.”

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-705.08. Limitations on distribution.

(a) A limited partnership shall not make a distribution, including a distribution under § 29-708.09, in violation of the partnership agreement.

(b) A limited partnership shall not make a distribution if after the distribution:

(1) The limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership’s activities and affairs; or

(2) The limited partnership’s total assets would be less than the sum of its total liabilities plus, unless the partnership agreement permits otherwise, the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners and transferees whose preferential rights are superior to those of persons receiving the distribution.

(c) A limited partnership may base a determination that a distribution is not prohibited under subsection (b) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(d) Except as otherwise provided in subsection (g) of this section, the effect of a distribution under subsection (b) of this section shall be measured:

(1) In the case of distribution, as defined in § 29-701.02(3), as of the earlier of:

(A) The date money or other property is transferred or debt is incurred by the limited partnership; or

(B) The date the person entitled to the distribution ceases to own the interest or right being acquired by the partnership in return for the distribution;

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of the date:

(A) The distribution is authorized, if the payment occurs not later than 120 days after that date; or

(B) The payment is made, if payment occurs more than 120 days after the distribution is authorized.

(e) A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section shall be at parity with the limited partnership's indebtedness to its general, unsecured creditors.

(f) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, shall not considered a liability for purposes of subsection (b) of this section if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

(g) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness shall be treated as a distribution, the effect of which is measured on the date the payment is made.

(h) In measuring the effect of a distribution under § 29-705.03, the debts, obligations, and other liabilities of a dissolved limited partnership do not include any claim that has been disposed of under § 29-708.06, [§] 29-708.07, or [§] 29-708.08.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(6)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote (b) and (d); and added (h).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VI. Dissociation.

§ 29-706.01. Dissociation as limited partner.

(a) A person shall not have a right to dissociate as a limited partner before the completion of the winding up of the limited partnership.

(b) A person shall be dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

(1) The limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;

(2) An event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;

(3) The person's expulsion as a limited partner pursuant to the partnership agreement;

(4) The person's expulsion as a limited partner by the unanimous consent of the other partners if:

(A) It is unlawful to carry on the limited partnership's activities with the person as a limited partner;

(B) There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(C) The person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(D) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) On application by the limited partnership, the person's expulsion as a limited partner by judicial order because:

(A) The person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;

(B) The person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under § 29-703.05(b); or

(C) The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities with the person as limited partner;

(6) In the case of a person who is an individual, the person's death;

(7) In the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(8) In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(9) Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;

(10) The limited partnership's participation in a merger under subchapter X of this chapter, if the limited partnership is;

(A) Not the surviving entity; or

(B) The surviving entity but, as a result of the merger, the person ceases to be a limited partner;

(11) The limited partnership's participation in a transaction under Chapter 2 of this title if the limited partnership shall:

(A) Not survive the transaction; or

(B) Survive the transaction, but as a result of the transaction, the person ceases to be a limited partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(7)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “completion of the winding up” for “termination” in (a).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-706.02. Effect of dissociation as limited partner.

(a) Upon a person's dissociation as a limited partner:

(1) Subject to § 29-707.04, the person shall not have further rights as a limited partner;

(2) The person's obligation of good faith and fair dealing as a limited partner under § 29-703.05(b) shall continue only as to matters arising and events occurring before the dissociation; and

(3) Subject to § 29-707.04 and subchapter X of this chapter, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation shall be owned by the person as a mere transferee.

(b) A person's dissociation as a limited partner does not itself discharge the person from any debt, liability, or other obligation to the limited partnership or the other partners which the person incurred while a limited partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(7)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “does not itself discharge the person from any debt, liability, or other obligation” for “shall not of itself discharge the person from any obligation” in (b).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-706.03. Dissociation as general partner.

A person shall be dissociated from a limited partnership as a general partner when:

(1) The limited partnership has notice of the person's express will to withdraw as a general partner or on a later date specified by the person;

(2) An event agreed to in the partnership agreement as causing the person's dissociation as a general partner occurs;

(3) The person is expelled as a general partner pursuant to the partnership agreement;

(4) The person is expelled as a general partner by the unanimous consent of the other partners if:

(A) It is unlawful to carry on the limited partnership's activities with the person as a general partner;

(B) There has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for

security purposes, or a court order charging the person's interest, which has not been foreclosed;

(C) The person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(D) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) On application by the limited partnership, the person is expelled as a general partner by judicial determination because:

(A) The person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;

(B) The person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under § 29-704.08; or

(C) The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;

(6) The person:

(A) Became a debtor in bankruptcy;

(B) Executes an assignment for the benefit of creditors;

(C) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or

(D) Fails, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) In the case of a person who is an individual:

(A) The person dies;

(B) A guardian or general conservator is appointed for the person; or

(C) There is a judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;

(8) In the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, the trust's entire transferable interest in the limited partnership is distributed;

(9) In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited partnership is distributed;

(10) A general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate terminates;

(11) The limited partnership's participation in a merger under subchapter X of this chapter, if the limited partnership is:

(A) Not the surviving entity; or

(B) The surviving entity but, as a result of the merger, the person ceases to be a general partner; or

(12) The limited partnership's participation in a transaction under the [sic] Chapter 2 of this title if the limited partnership:

(A) Does Not [not] survive the transaction; or

(B) Survives the transaction, but as a result of the transaction, the person ceases to be a general partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(7)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 deleted “shall” at the end of the introductory language of (12); substituted “Does not” for “Not” in (12)(A); and substituted “Survives” for “Survive” in (12)(B).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-706.04. Person's power to dissociate as general partner; wrongful dissociation.

(a) A person may dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to § 29-706.03(1).

(b) A person's dissociation as a general partner shall be wrongful only if:

(1) It is in breach of an express provision of the partnership agreement; or

(2) It occurs before the completion of the winding up of the limited partnership and the person:

(A) Withdraws as a general partner by express will;

(B) Expelled as a general partner by judicial determination under § 29-706.03(5);

(C) Is dissociated as a general partner by becoming a debtor in bankruptcy; or

(D) In the case of a person that is not an individual, trust (other than a business trust), or estate, is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a general partner shall be liable to the limited partnership and, subject to § 29-709.01, to the other partners for damages caused by the dissociation. The liability shall be in addition to any other obligation of the general partner to the limited partnership or to the other partners.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(7)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “completion of the winding up” for “termination” in (b)(2).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C.

Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-706.05. Effect of dissociation as general partner.

(a) Upon a person's dissociation as a general partner:

(1) The person's right to participate as a general partner in the management and conduct of the partnership's activities and affairs shall terminate;

(2) The person's duty of loyalty as a general partner under § 29-704.08(b)(3) shall terminate;

(3) The person's duty of loyalty as a general partner under § 29-704.08(b)(1) and (2) and duty of care under § 29-704.08(c) continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;

(4) The person may sign and deliver to the Mayor for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated; and

(5) Subject to § 29-707.04, subchapter X of this chapter, and Chapter 2 of this title, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner shall be owned by the person as a mere transferee.

(b) A person's dissociation as a general partner shall not of itself discharge the person from any debt, liability, or other obligation to the limited partnership or the other partners which the person incurred while a general partner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(7)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "activities and affairs" for "activities" in (a)(1); and substituted "debt, liability, or other obligation" for "obligation" in (b).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-706.06. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner.

(a) After a person is dissociated as a general partner and before the limited partnership is dissolved, merged out of existence, converted, or domesticated under subchapter X of this chapter or Chapter 2 of this title, or otherwise ceases to exist in the form of a limited partnership as a result of a transaction under Chapter 2 of this title, the limited partnership shall be bound by an act of the person only if:

(1) The act would have bound the limited partnership under § 29-704.02 before the dissociation; and

(2) At the time the other party enters into the transaction:

(A) Less than 2 years has passed since the dissociation; and

(B) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(b) If a limited partnership is bound under subsection (a) of this section, the person dissociated as a general partner which caused the limited partnership to be bound shall be liable:

(1) To the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection (a) of this section; and

(2) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(7)(F), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “merged out of existence, converted, or domesticated” for “merged” in (a).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-706.07. Liability to other persons of person dissociated as general partner.

(a) A person’s dissociation as a general partner shall not of itself discharge the person’s liability as a general partner for a debt, obligation, or other liability of the limited partnership incurred before dissociation. Except as otherwise provided in subsections (b) and (c) of this section, the person shall not be liable for a limited partnership’s debt, obligation, or other liability incurred after dissociation.

(b) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership’s activities and affairs shall not be liable to the same extent as a general partner under § 29-704.04 on a debt, obligation, or other liability incurred by the limited partnership under § 29-708.04.

(c) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership’s activities and affairs shall not be liable on a transaction entered into by the limited partnership after the dissociation only if:

(1) A general partner would be liable on the transaction; and

(2) At the time the other party enters into the transaction:

(A) Less than 2 years has passed since the dissociation; and

(B) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(d) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for a debt, liability, or other obligation of the limited partnership.

(e) A person dissociated as a general partner shall be released from liability for a debt, obligation, or other liability of the limited partnership if the limited

partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the a debt, obligation, or other liability.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(7)(G), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “a debt, obligation, or other liability” for “an obligation” or variants thereof in (a), (d) and (e); and substituted “activities and affairs” for “activities” in (b) and (c).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VII. Transferable Interests and Rights of Transferees and Creditors.

§ 29-707.01. Partner's transferable interest.

A transferable interest is personal property.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(8)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-707.02. Transfer of partner's transferable interest.

(a) A transfer, in whole or in part, of a partner's transferable interest:

- (1) Is permissible;
- (2) Shall not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities and affairs; and
- (3) Shall not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities and affairs, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection (c) of this section, or to inspect or copy the required information or the limited partnership's other records.

(b) A transferee shall have a right to receive, in accordance with the transfer:

- (1) Distributions to which the transferor would otherwise be entitled; and
- (2) Upon the dissolution and winding up of the limited partnership's activities and affairs, the net amount otherwise distributable to the transferor.

(c) In a dissolution and winding up, a transferee shall be entitled to an account of the limited partnership's transactions only from the date of dissolution.

(d) Upon transfer, the transferor retain the rights of a partner other than

the interest in distributions transferred and shall retain all duties and obligations of a partner.

(e) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

(f) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement shall be ineffective as to a person having notice of the restriction at the time of transfer.

(g) A transferee that becomes a partner with respect to a transferable interest shall be liable for the transferor's obligations under §§ 29-705.02 and 29-705.09. However, the transferee shall not be obligated for liabilities unknown to the transferee at the time the transferee became a partner.

(h) A transferable interest may be evidenced by a certificate of the interest issued by a limited partnership in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(8)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "activities and affairs" for "activities" in (a)(2), (a)(3), and (b)(2); and added (h).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-707.03. Charging order.

(a) On application by a judgment creditor of a partner or transferee, the Superior Court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited partnership to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a) of this section, the Superior Court may:

(1) Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) Make all other orders necessary to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the Superior Court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a partner, and is subject to § 29-707.02.

(d) At any time before foreclosure under subsection (c) of this section, the partner or transferee whose transferable interest is subject to a charging order

under subsection (a) of this section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the Superior Court.

(e) At any time before foreclosure under subsection (c) of this section, a limited partnership or one or more partners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) This chapter does not deprive any partner or transferee of the benefit of any exemption law applicable to the transferable interest of the partner or transferee.

(g) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a partner or transferee may, in the capacity of a judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(8)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-707.04. Power of legal representative of deceased partner.

If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in § 29-707.02 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under § 29-703.04.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(8)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "legal representative" for "estate" in the section heading.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VIII. Dissolution.

§ 29-708.01. Nonjudicial dissolution.

Except as otherwise provided in § 29-708.02, a limited partnership is dissolved, and its activities and affairs shall be wound up, only upon the occurrence of any of the following:

- (1) The happening of an event specified in the partnership agreement;
- (2) The consent of all general partners and of limited partners owning a

majority of the rights to receive distributions as limited partners at the time the consent is to be effective;

(3) After the dissociation of a person as a general partner:

(A) If the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given within 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or

(B) If the limited partnership does not have a remaining general partner, the passage of 90 days after the dissociation, unless before the end of the period:

(i) Consent to continue the activities and affairs of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(ii) At least one person is admitted as a general partner in accordance with the consent;

(4) The passage of 90 days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner; or

(5) The signing and filing of a certificate of dissolution by the Mayor under § 29-106.02.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(9)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” in the introductory language and in (3)(B)(i).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-708.02. **Judicial dissolution.**

On application by a partner the Superior Court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities and affairs of the limited partnership in conformity with the partnership agreement.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(9)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities”.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-708.03. **Winding up.**

(a) A limited partnership shall continue after dissolution only for the purpose of winding up its activities and affairs.

(b) In winding up its activities and affairs, the limited partnership:

(1) May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in § 29-702.03, and perform other necessary acts; and

(2) Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

(c) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities and affairs may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection shall:

(1) Have the powers of a general partner under § 29-708.04; and

(2) Promptly amend the certificate of limited partnership to state:

(A) That the limited partnership does not have a general partner;

(B) The name of the person that has been appointed to wind up the limited partnership; and

(C) The street and mailing address of the person.

(d) On the application of any partner, the Superior Court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities and affairs, if:

(1) A limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (c) of this section; or

(2) The applicant establishes other good cause.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(9)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” throughout the section.

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-708.04. Power of general partner and person dissociated as general partner to bind partnership after dissolution.

(a) A limited partnership shall be bound by a general partner's act after dissolution which:

(1) Is appropriate for winding up the limited partnership's activities and affairs; or

(2) Would have bound the limited partnership under § 29-704.02 before

dissolution, if, at the time the other party enters into the transaction, the other party does not have notice or knowledge of the dissolution.

(b) A person dissociated as a general partner shall bind a limited partnership through an act occurring after dissolution if:

(1) At the time the other party enters into the transaction:

(A) Less than 2 years has passed since the dissociation; and

(B) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and

(2) The act:

(A) Is appropriate for winding up the limited partnership's activities; or

(B) Would have bound the limited partnership under § 29-704.02 before dissolution and at the time the other party enters into the transaction the other party does not have notice or knowledge of the dissolution.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(9)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” in (a)(1); and substituted “notice or knowledge” for “notice” in (a)(2) and (b)(2)(B).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-708.05. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partner.

(a) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under § 29-708.04(a) by an act that is not appropriate for winding up the partnership's activities and affairs, the general partner shall be liable:

(1) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(2) If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(b) If a person dissociated as a general partner causes a limited partnership to incur an obligation under § 29-708.04(b), the person shall be liable:

(1) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(2) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(9)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” in (a).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-708.09. Disposition of assets; when contributions required.

(a) In winding up a limited partnership’s activities and affairs, the assets of the limited partnership, including the contributions required by this section, shall be applied to satisfy the limited partnership’s obligations to creditors, including, to the extent permitted by law, partners that are creditors.

(b) Any surplus remaining after the limited partnership complies with subsection (a) of this section shall be paid in cash as a distribution.

(c) If a limited partnership’s assets are insufficient to satisfy all of its obligations under subsection (a) of this section, with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:

(1) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under § 29-706.07 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons shall be in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(2) If a person does not contribute the full amount required under paragraph (1) of this subsection with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by paragraph (1) of this subsection on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons shall be in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

(3) If a person does not make the additional contribution required by paragraph (2), further additional contributions shall be determined and due in the same manner as provided in that paragraph.

(d) A person that makes an additional contribution under subsection (c)(2) or (3) of this section may recover from any person whose failure to contribute under subsection (c)(1) or (2) of this section necessitated the additional contribution. A person shall not recover under this subsection more than the amount additionally contributed. A person’s liability under this subsection shall not exceed the amount the person failed to contribute.

(e) The estate of a deceased individual shall be liable for the person’s obligations under this section.

(f) An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person’s obligation to contribute under subsection (c) of this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(9)(F), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” in (a).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-708.10. Rescinding dissolution.

(a) A limited partnership may rescind its dissolution, unless a statement of termination applicable to the partnership is effective, the Superior Court has entered an order under § 29-708.02 dissolving the partnership, or the Mayor has dissolved the partnership under § 29-106.02.

(b) Rescinding dissolution under this section requires:

(1) The consent of each partner; and

(2) If the limited partnership has delivered to the Mayor for filing an amendment to the certificate of limited partnership stating that the partnership is dissolved and if:

(A) The amendment is not effective, the filing by the partnership of a statement of withdrawal under § 29-102.04 applicable to the amendment; or

(B) The amendment is effective, the delivery by the partnership to the Mayor for filing of an amendment to the certificate of limited partnership stating that dissolution has been rescinded under this section.

(c) If a limited partnership rescinds its dissolution:

(1) The partnership resumes carrying on its activities and affairs as if dissolution had never occurred;

(2) Subject to paragraph (3) of this subsection, any liability incurred by the partnership after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and

(3) The rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

(Mar. 5, 2013, D.C. Law 19-210, § 2(g)(9)(G), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-701.02.

210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor’s notes. — Application of Law 19-

§ 29-708.11. Court proceedings.

(a) A dissolved limited partnership that has published a notice under § 29-708.06(b) may file an application with the Superior Court, or, if the principal office is not located in the District, in an appropriate court where the company’s principal office is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the partnership, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the partnership, are reasonably expected to arise after the effective date of

dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under § 29-708.06(c).

(b) Not later than 10 days after the filing of an application under subsection (a) of this section, the dissolved limited partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the partnership.

(c) In a proceeding brought under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited partnership.

(d) A dissolved limited partnership that provides security in the amount and form ordered by the court under subsection (a) of this section satisfies the partnership's obligations with respect to claims that are contingent, have not been made known to the partnership, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a partner or transferee that received assets in liquidation.

(Mar. 5, 2013, D.C. Law 19-210, § 2(g)(9)(G), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

Subchapter IX. Actions by Partners.

§ 29-709.01. Direct action by partner.

(a) Subject to subsection (b) of this section, a partner may maintain a direct action in the Superior Court against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities and affairs, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(b) A partner commencing a direct action under this section shall be required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section shall be governed by other law. A right to an accounting upon a dissolution and winding up shall not revive a claim barred by law.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(10)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "activities and affairs" for "activities" in (a).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-709.05. **Proceeds and expenses.**

(a) Except as otherwise provided in subsection (b) of this section:

(1) Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, shall belong to the limited partnership and not to the derivative plaintiff;

(2) If the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

(b) If a derivative action is successful in whole or in part, the Superior Court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, from the recovery of the limited partnership.

(c) A derivative action on behalf of a limited partnership may not be voluntarily dismissed or settled without the Superior Court's approval.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(g)(10)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added (c).

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-709.06. **Special litigation committee.**

(a) If a limited partnership is named as or made a party in a derivative proceeding, the partnership may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the partnership. If the partnership appoints a special litigation committee, on motion by the committee made in the name of the partnership, except for good cause shown, the Superior Court shall stay discovery for the time reasonably necessary to permit the committee to complete its investigation. This subsection does not prevent the court from enforcing a person's right to information under § 29-703.04 or 29-704.07 or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee may be composed of one or more disinterested and independent individuals, who may be partners.

(c) A special litigation committee may be appointed:

(1) By a majority of the general partners not named as defendants or plaintiffs in the proceeding; and

(2) If all general partners are named as defendants or plaintiffs in the proceeding, by a majority of the general partners named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited partnership that the proceeding:

(1) Continue under the control of the plaintiff;

(2) Continue under the control of the committee;

(3) Be settled on terms approved by the committee; or

(4) Be dismissed.

(e) After making a determination under subsection (d) of this section, a

special litigation committee shall file with the Superior Court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee met their burden of proof, were disinterested and independent, and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) of this section and allow the action to proceed under the direction of the plaintiff.

(Mar. 5, 2013, D.C. Law 19-210, § 2(g)(10)(C), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-701.02.

Editor's notes. — Application of Law 19-

210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

CHAPTER 8. LIMITED LIABILITY COMPANIES.

Subchapter I. General Provisions

Sec.

- 29-801.02. Definitions.
- 29-801.03. Knowledge; notice.
- 29-801.04. Nature, purpose, and duration of limited liability company.
- 29-801.05. Powers.
- 29-801.07. Operating agreement; scope, function, and limitations.
- 29-801.09. Operating agreement; effect on third parties and relationship to records effective on behalf of limited liability company.

Subchapter II. Formation; Certificate of Organization, and Other Filings

- 29-802.01. Formation of limited liability company; certificate of organization.
- 29-802.02. Amendment or restatement of certificate of organization.
- 29-802.03. Signing of records to be delivered for filing to Mayor.
- 29-802.04. Signing and filing pursuant to judicial order.
- 29-802.05. Liability for inaccurate information in filed record.
- 29-802.06. Series of members, managers, or interests of limited liability company.

Subchapter III. Relations of Members and Managers to Persons Dealing with Limited Liability Company

Sec.

- 29-803.04. Liability of members and managers.

Subchapter IV. Relations of Members to Each Other and to Limited Liability Company

- 29-804.01. Becoming member.
- 29-804.02. Form of contribution.
- 29-804.03. Liability for contributions.
- 29-804.04. Sharing of and right to distributions before dissolution.
- 29-804.05. Limitations on distribution.
- 29-804.07. Management of limited liability company.
- 29-804.08. Reimbursement, indemnification, advancement, and insurance.
- 29-804.09. Standards of conduct for members and managers.
- 29-804.10. Right of members, managers, and dissociated members to information.

Subchapter V. Transferable Interests and Rights of Transferees and Creditors

- 29-805.01. Nature of transferable interest.
- 29-805.02. Transfer of transferable interest.

Sec. 29-805.03. Charging order.	Sec. 29-807.04. Other claims against dissolved limited liability company.
<i>Subchapter VI. Member's Dissociation</i>	29-807.05. Distribution of assets in winding up limited liability company's activities and affairs.
29-806.01. Member's power to dissociate; wrongful dissociation.	29-807.06. Rescinding dissolution.
29-806.02. Events causing dissociation.	29-807.07. Court proceedings.
29-806.03. Effect of person's dissociation as member.	<i>Subchapter VIII. Actions by Members</i>
<i>Subchapter VII. Dissolution and Winding up</i>	29-808.03. Proper plaintiff.
29-807.01. Events causing dissolution.	29-808.05. Special litigation committee.
29-807.02. Winding up.	29-808.06. Proceeds and expenses.

Subchapter I. General Provisions.

§ 29-801.02. Definitions.

For the purposes of this chapter, the term:

(1) "Certificate of organization", except when referring to a right of contribution, means the certificate required by § 29-802.01. The term "certificate of organization" shall include the certificate as amended or restated.

(2) "Contribution" means any benefit provided by a person to a limited liability company:

(A) To become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(B) To become a member after formation of the company and in accordance with an agreement between the person and the company; or

(C) In the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

(3) "Distribution" means a transfer of money or other property from a limited liability company to another person on account of a transferable interest or in the person's capacity as a member.

(A) The term includes:

(i) A redemption or other purchase by a limited liability company of a transferable interest; and

(ii) A transfer to a member in return for the member's relinquishment of any right to participate as a member in the management or conduct of the company's activities and affairs or to have access to records or other information concerning the company's activities and affairs.

(B) The term does not include amounts constituting reasonable compensation for present or past services or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(4) "Effective", with respect to a record required or permitted to be delivered to the Mayor for filing under this chapter, means effective under § 29-102.03.

(5) "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than the District which would be a limited liability company if formed under the law of the District.

(6) “Manager” means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in § 29-804.07(c).

(7) “Manager-managed limited liability company” means a limited liability company that qualifies under § 29-804.07(a).

(8) “Member” means a person that has become a member of a limited liability company under § 29-804.01, or was a member in a limited liability company when the company became subject to this chapter under § 29-810.01, and has not dissociated under § 29-806.02.

(9) “Member-managed limited liability company” means a limited liability company that is not a manager-managed limited liability company.

(10) “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in § 29-801.07. The term includes the agreement as amended or restated.

(11) “Organizer” means a person that acts under § 29-802.01 to form a limited liability company.

(12) “Transferable interest” means the right, as initially owned by a person in the person’s capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

(13) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(2)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — Law 19-210, the “District of Columbia Official Code Title 29 Technical and Harmonizing Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-532. The Bill was adopted on first and second readings on July

10, 2012, and Oct. 2, 2012, respectively. Signed by the Mayor on Oct. 31, 2012, it was assigned Act No. 19-512 and transmitted to Congress for its review. D.C. Law 19-210 became effective on Mar. 5, 2013.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-801.03. Knowledge; notice.

(a) A person knows a fact when the person:

(1) Has actual knowledge of it; or

(2) Is deemed to know it under subsection (d)(1) of this section or law other than this chapter.

(b) A person has notice of a fact when the person:

(1) Has reason to know the fact from all of the facts known to the person at the time in question; or

(2) Is deemed to have notice of the fact under subsection (d)(2) of this section;

(c) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(d) A person that is not a member shall be deemed to:

(1) Know of a limitation on authority to transfer real property as provided in § 29-803.02(g); and

(2) Have notice of a limited liability company's:

(A) Dissolution, 90 days after a statement of dissolution under § 29-807.02(b)(2)(A) becomes effective;

(B) Termination, 90 days after a statement of termination § 29-807.02(b)(2)(F) becomes effective; and

(C) Participation in a merger, interest exchange, conversion, or domestication, 90 days after the articles of merger, interest exchange, conversion, or domestication under subchapter IX of this chapter or under Chapter 2 of this title becomes effective.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(2)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote d)(2)(C).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-801.04. Nature, purpose, and duration of limited liability company.

(a) A limited liability company is an entity distinct from its member or members.

(b) A limited liability company may have any lawful purpose, regardless of whether for profit.

(c) A limited liability company shall have perpetual duration.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(2)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “member or members” for “members” in (a).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-801.05. Powers.

A limited liability company shall have the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(2)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities.”

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-801.07. Operating agreement; scope, function, and limitations.

(a) Except as otherwise provided in subsections (b) and (c) of this section, the operating agreement shall govern:

(1) Relations among the members as members and between the members and the limited liability company;

(2) The rights and duties under this chapter of a person in the capacity of manager;

(3) The activities and affairs of the company and the conduct of those activities and affairs; and

(4) The means and conditions for amending the operating agreement.

(b) To the extent the operating agreement does not otherwise provide for a matter described in subsection (a) of this section, this chapter shall govern the matter.

(c) An operating agreement shall not:

(1) Vary a limited liability company’s capacity under § 29-801.05 to sue and be sued in its own name;

(2) Vary the law applicable under § 29-801.06;

(3) Vary the provisions of § 29-802.04;

(4) Subject to subsections (d) through (g) of this section, eliminate the duty of loyalty, the duty of care, or any other fiduciary duty;

(5) Eliminate the contractual obligation of good faith and fair dealing under § 29-804.09(d), but the operating agreement may prescribe the standards, if not manifestly unreasonable, by which the performance of the obligation is to be measured;

(6) Unreasonably restrict the duties and rights stated in § 29-804.10;

(7) Vary the causes of dissolution specified in § 29-807.01(a)(4) and (5);

(8) Vary the requirement to wind up a limited liability company’s activities and affairs as specified in § 29-807.02;

(9) Unreasonably restrict the right of a member to maintain an action under Subchapter 8 of this chapter;

(10) Restrict the right to approve a merger or domestication under § 29-809.10 or Chapter 2 of this title of a member that will have personal liability with respect to a surviving, converted, or domesticated organization;

(11) Except as otherwise provided in § 29-801.08 or 29-801.09(b), restrict the rights under this chapter of a person other than a member or manager.

(12) Vary any requirement, procedure, or other provision of this title pertaining to:

(A) Registered agents; or

(B) The Mayor, including provisions pertaining to records authorized or required to be delivered to the Mayor for filing under this chapter;

(13) Relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of the law; or

(14) Vary the provisions of § 29-808.05, except that the operating agreement may provide that the company may not have a special litigation committee.

(17) [(15)] Vary the power of a person to dissociate under § 29-807.01, except to require that notice of dissociation be in a record.

(d) Subject to subsection (c) of this section, without limiting other terms that may be included in an operating agreement, the following rules apply:

(1) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(2) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this chapter and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(3) If not manifestly unreasonable, the operating agreement may:

(A) Restrict or eliminate the aspects of the duty of loyalty stated in § 29-804.09;

(B) Identify specific types or categories of activities and affairs that do not violate the duty of loyalty;

(C) Alter the duty of care, but may not authorize willful or intentional misconduct or knowing violation of law; and

(D) Alter or eliminate any other fiduciary duty.

(e) Repealed.

(f) Repealed.

(g) Repealed.

(h) The Superior Court shall decide, as a matter of law, any claim under subsection (c)(5) or (d)(3) of this section that a term of an operating agreement is manifestly unreasonable. The court:

(1) Shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(2) May invalidate the term only if, in light of the purposes and activities and affairs of the limited liability company, it is readily apparent that:

(A) The objective of the term is unreasonable; or

(B) The term is an unreasonable means to achieve the provision's objective.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(2)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-801.09. Operating agreement; effect on third parties and relationship to records effective on behalf of limited liability company.

(a) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment shall be ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member shall be governed by the operating agreement. Subject only to any court order issued under § 29-805.03(b)(2) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member shall be effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member and is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a member.

(c) If a record that has been delivered by a limited liability company to the Mayor for filing and has become effective under this chapter contains a provision that would be ineffective under § 29-801.07(c) or (d)(3) if contained in the operating agreement, the provision shall likewise be ineffective in the record.

(d) Subject to subsection (c) of this section, if a record that has been delivered by a limited liability company to the Mayor for filing and has become effective under this chapter conflicts with a provision of the operating agreement:

(1) The operating agreement shall prevail as to members, dissociated members, transferees, and managers; and

(2) The record shall prevail as to other persons to the extent they reasonably rely on the record.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(2)(F), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added “and is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a member” at the end of (b); and substituted “§ 29-801.07(c) or (d)(3)” for “§ 29-801.07(c)” in (c).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter II. Formation; Certificate of Organization, and Other Filings.

§ 29-802.01. Formation of limited liability company; certificate of organization.

(a) One or more persons may act as organizers to form a limited liability company by signing and delivering to the Mayor for filing a certificate of organization.

(b) A certificate of organization shall state:

(1) The name of the limited liability company, which shall comply with §§ 29-103.01 and 29-103.02(f);

(2) The street and mailing addresses of the initial principal office and the name and street and information required by § 29-104.04; and

(3) If the company will have one or more series that is treated as a separate entity which limits the debts, obligations, and other liabilities to the assets of a particular series as provided in the operating agreement as authorized by § 29-802.06, a statement to that effect.

(c) Subject to § 29-801.09(c), a certificate of organization may also contain statements as to matters other than those required by subsection (b) of this subsection [section] but may not vary or otherwise affect the provisions of § 29-801.07(c) in a manner inconsistent with that section. However, a statement in a certificate of organization shall not be effective as a statement of authority.

(d) A limited liability company is formed when the Mayor has filed the company's certificate of organization and it becomes effective and at least one person becomes a member.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(a), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote (c) and (d); and repealed (e) which read “If a filed certificate of organization contains a statement as provided in subsection (b)(3) of this section, the following rules shall apply: (1) The certificate shall lapse and be void unless, within 90 days from the date the Mayor files the certificate, an organizer signs and delivers to the Mayor for filing a notice stating: (A) That the limited liability company has at least one member; and (B) The date on which a person or persons became the company's initial member or members. (2) If an organizer complies with paragraph (1) of this subsection, a limited liability company shall be deemed formed as of the

date of initial membership stated in the notice delivered pursuant to paragraph (1) of this subsection. (3) Except in a proceeding by the District to dissolve a limited liability company, the filing of the notice described in paragraph (1) of this subsection by the Mayor shall be conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.”

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-802.02. Amendment or restatement of certificate of organization.

(a) A certificate of organization may be amended or restated at any time.

(b) To amend its certificate of organization, a limited liability company shall deliver to the Mayor for filing an amendment stating:

- (1) The name of the company;
- (2) The date of filing of its initial certificate of organization; and
- (3) The changes the amendment makes to the certificate as most recently amended or restated.

(c) To restate its certificate of organization, a limited liability company shall deliver to the Mayor for filing a restatement, designated as such in its heading.

(d) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly:

- (1) Cause the certificate to be amended; or
- (2) If appropriate, deliver to the Mayor for filing a statement of change under §§ 29-104.07 through 29-104.10 or a statement of correction under § 29-102.05.

(e) A limited liability company may amend its certificate of organization to delete the information required by § 29-802.01(b)(2) at any time after it has filed its first biennial report under § 29-102.11.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(3)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “initial certificate” for “certificate” in (b)(2); deleted “stating” following “heading” at the end of (c) and substituted a closing period for the semicolon; repealed (c)(1) through (c)(3); repealed (d), which read: “Subject to §§ 29-801.09(c) and 29-802.05(c), an amendment to or restatement of a certificate of organization

shall be effective when filed by the Mayor.”; and redesignated former (e) and (f) as (d) and (e), respectively.

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-802.03. Signing of records to be delivered for filing to Mayor.

(a) A record delivered to the Mayor for filing pursuant to this chapter must be signed as follows:

(1) Except as otherwise provided in paragraph (2) and (3) of this subsection, a record signed on behalf of a limited liability company shall be signed by a person authorized by the company.

(2) A limited liability company’s initial certificate of organization shall be signed by at least one person acting as an organizer.

(3) A record filed on behalf of a dissolved limited liability company that has no members shall be signed by the person winding up the company’s activities and affairs under § 29-807.02(c) or a person appointed under § 29-807.02(d) to wind up those activities and affairs.

(4) A statement of denial by a person under § 29-803.03 shall be signed by that person.

(5) Any other record delivered to the Mayor for filing on behalf of a person shall be signed by that person.

(b) A person that signs a record as an agent or legal representative thereby affirms that the person is authorized to sign the record.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(3)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-802.04. Signing and filing pursuant to judicial order.

(a) If a person required by this chapter to sign a record or deliver a record to the Mayor for filing under this chapter does not do so, any other person that is aggrieved may petition the Superior Court to order:

- (1) The person to sign the record;
- (2) The person to deliver the record to the Mayor for filing; or
- (3) The Mayor to file the record unsigned.

(b) If a petitioner under subsection (a) of this section is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company a party to the action.

(c) A record filed under subsection (a)(3) of this section is effective without being signed.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(3)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added (c).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-802.05. Liability for inaccurate information in filed record.

(a) If a record delivered to the Mayor for filing under this chapter and filed by the Mayor contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

(1) A person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(2) Subject to subsection (b) of this section, a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:

- (A) The record was delivered for filing on behalf of the company; and
- (B) The member or manager had notice of the inaccuracy for a reason-

ably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(i) Effected an amendment under § 29-802.02;

(ii) Filed a petition under § 29-802.04; or

(iii) Delivered to the Mayor for filing a statement of change under §§ 29-104.07 through 29-104.10 or a statement of correction under § 29-102.05.

(b) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the Mayor for filing under this chapter and imposes that responsibility on one or more other members, the liability stated in subsection (a)(2) of this section shall apply to those other members and not to the member that the operating agreement relieves of the responsibility.

(c) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of making false statements that the information stated in the record is accurate.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(3)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “making false statements” for “perjury” in (c).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-802.06. Series of members, managers, or interests of limited liability company.

(a) The operating agreement may establish one or more designated series of members, managers, or interests of a limited liability company, in which the members, managers, or interest holders have separate rights, powers, or duties with respect to specified property or obligations of the limited liability company.

(b) The debts, obligations, and other liabilities of a series of a limited liability company, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the series and not of the limited liability company generally or any other series thereof; provided, that:

(1) Separate and distinct records are maintained for the limited liability company and each series;

(2) Assets associated with the limited liability company and each series are held, directly or indirectly, including through a nominee or otherwise, and accounted for separately in the separate and distinct records;

(3) The certificate of organization states that the debts, obligations, and other liabilities of the series are limited as provided in this subsection; and

(4) The limited liability company has delivered to the Mayor for filing and paid the requisite fee for a certificate of series designation as provided in subsection (e) of this section for each series so designated whose debts, obligations, and other liabilities are limited under this subsection.

(c) A statement in the certificate or organization in compliance with subsection (b)(3) of this section shall be notice of the limitation on liabilities of a series of a limited liability company and shall be sufficient for all purposes of subsection (b) of this section regardless of whether the limited liability company has established any series when such notice is included in the certificate or whether a series has any members.

(d) A certificate of series designation of a series of a limited liability company shall state:

(1) A different name for each series that contains the entire name of the limited liability company but otherwise complies with §§ 29-103.01 and 29-103.02(f); and

(2) A street and mailing address of the principal office and name and mailing address of a registered agent, if either is different from that specified for the limited liability company.

(e) A series of a limited liability company shall be formed when the Mayor files the certificate of series designation, unless the certificate states a delayed effective date, in which case it is formed as provided in § 29-802.01(d). The filing of the certificate by the Mayor is conclusive proof that a series has been formed.

(f) Upon the filing by the limited liability company of the report required by § 29-102.11, the Mayor shall furnish a certificate of good standing for a series of a limited liability company or a certificate of registration for a series of a foreign limited liability company.

(g) A series of a limited liability company shall be in good standing as long as the limited liability company is in good standing.

(h) The articles of organization may provide that a series be treated as a separate entity distinct from the limited liability company, other series of the limited liability company, or the members of the limited liability company.

(i) A series of a limited liability company may have any lawful purpose, regardless of whether for profit, or whether the purpose is different from that of the limited liability company or another series thereof.

(j) A series of a limited liability company shall have the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.

(k) The law of the District shall govern:

(1) The internal affairs of a series of a limited liability company; and

(2) The liability of a member or manager of a series as a member or manager of that series.

(l) Subject to § 29-804.07, the management of a series of a limited liability company shall be vested in the members collectively.

(m) The events causing dissociation of a member specified in § 29-806.02 shall be applied separately to a person that is a member in more than one series of a limited liability company or a member in the series and the limited liability company.

(n) Except as otherwise provided in § 29-807.01, a series of a limited liability company may be dissolved and wound up without causing the dissolution of the limited liability company or any other series thereof.

(o) A series of a limited liability company shall not engage in a transaction under subchapter IX of this chapter or Chapter 2 of this title independently of the limited liability company.

(p) The registered agent for the limited liability company shall be the registered agent for each series of the company.

(q) The management of a series of a limited liability company shall be governed by § 29-804.07.

(r) In all matters not otherwise specifically addressed in this section, this chapter shall govern a series as if the series of the limited liability company were a separate limited liability company formed under this chapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(3)(F), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210, in (b)(4), substituted “delivered to the Mayor for filing” for “filed with the Mayor” and deleted the commas around “and paid the requisite fee for”; and substituted “activities and affairs” for “activities” in (j).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter III. Relations of Members and Managers to Persons Dealing with Limited Liability Company.

§ 29-803.04. Liability of members and managers.

(a) The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise shall:

(1) Be solely the debts, obligations, or other liabilities of the company; and

(2) Not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager regardless of the dissolution of the company.

(b) The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities and affairs shall not be a ground for imposing liability on the members or managers for the debts, obligations, or other liabilities of the company.

(c) With respect to members of professional limited liability companies, a member shall be personally liable and accountable only for any negligent or wrongful acts or misconduct committed by the member, or by any individual under the member’s supervision and control in the rendering of professional service on behalf of a professional limited liability company organized under this chapter. A member of a professional limited liability company shall not be personally liable and accountable merely because of the member’s membership interest in the professional limited liability company.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(4), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added “regardless of the dissolution of the company” at the end of (a)(2); and substituted “activities and affairs” for “activities” in (b).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter IV. Relations of Members to Each Other and to Limited Liability Company.

§ 29-804.01. Becoming member.

(a) If a limited liability company is to have only one member upon formation, the person shall become a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer shall act on behalf of the initial member.

(b) If a limited liability company is to have more than one member upon formation, those persons shall become members as agreed by the persons before the formation of the company. The organizer [sic] act on behalf of the persons in forming the company and may be, but need not be, one of the persons.

(c) After formation of a limited liability company, a person becomes a member:

- (1) As provided in the operating agreement;
- (2) As the result of a transaction effective under subchapter IX of this chapter or Chapter 2 of this title;
- (3) With the consent of all the members; or
- (4) As provided in § 29-807.01(a)(3).

(d) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(5)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote (c)(4).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-804.02. Form of contribution.

A contribution may consist of property transferred, services performed, or another benefit provided to the limited liability company or an agreement to transfer property, perform services, or provide another benefit to the company.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(5)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-804.03. Liability for contributions.

(a) A person's obligation to make a contribution to a limited liability company shall not be excused by the person's death, disability, or other inability to perform personally. If a person does not fulfill an obligation, other than a monetary obligation, the person is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.

(b) The obligation of a person to make a contribution may be compromised only by consent of all members. A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subsection (a) of this section without notice of a compromise under this subsection may enforce the obligation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(5)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-804.04. Sharing of and right to distributions before dissolution.

(a) Any distributions made by a limited liability company before its dissolution and winding up shall be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under § 29-805.02 and any charging order in effect under § 29-805.03.

(b) A person shall have a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation shall not entitle the person to a distribution.

(c) A person shall not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in § 29-807.05(c), a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a member or transferee becomes entitled to receive a distribution, the member or transferee shall have the status of, and shall be entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. However, the company's obligation to make a distribution

is subject to offset for any amount owed to the company by the member or a person dissociated as a member on whose account the distribution is made.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(5)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added the last sentence in (d).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-804.05. Limitations on distribution.

(a) A limited liability company shall not make a distribution, including a distribution under § 29-807.05(c), if after the distribution:

(1) The company would not be able to pay its debts as they become due in the ordinary course of the company's activities and affairs; or

(2) The company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members and transferees whose preferential rights are superior to those of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsections (e) and (f) of this section, the effect of a distribution under subsection (a) of this section shall be measured:

(1) In the case of a distribution as defined in § 29-801.02(3), as of the earlier of (i) the date money or other property is transferred or debt incurred by the company or (ii) the date the person entitled to the distribution ceases to own the interest or right being acquired by the company in return for the distribution;

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of the date:

(A) The distribution is authorized, if the payment occurs within 120 days after that date; or

(B) The payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(d) A limited liability company's indebtedness to a member or transferee incurred by reason of a distribution made in accordance with this section shall be at parity with the company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(e) A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, shall not be a liability for

purposes of subsection (a) of this section if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(f) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness shall be treated as a distribution, the effect of which is measured on the date the payment is made.

(g) In measuring the effect of a distribution under § 29-807.05, the liabilities of a dissolved limited liability company do not include any claim that has been disposed of under § 29-807.03, § 29-807.04, or § 29-807.07.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(5)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote (a), (c), and (d).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-804.07. Management of limited liability company.

(a) A limited liability company shall be a member-managed limited liability company unless the operating agreement:

(1) Expressly provides that:

(A) The company is or will be “manager-managed”;

(B) The company is or will be “managed by managers”; or

(C) Management of the company is or will be “vested in managers”; or

(2) Includes words of similar import.

(b) In a member-managed limited liability company, the following rules shall apply:

(1) Except as otherwise expressly provided in this chapter, the management and conduct of the company shall be vested in the members.

(2) Each member shall have equal rights in the management and conduct of the company's activities and affairs.

(3) A difference arising among members as to a matter in the ordinary course of the activities and affairs of the company may be decided by a majority of the members.

(4) An act outside the ordinary course of the activities and affairs of the company may be undertaken only with the consent of all members.

(5) The operating agreement may be amended only with the consent of all members.

(c) In a manager-managed limited liability company, the following rules apply:

(1) Except as otherwise expressly provided in this chapter, any matter relating to the activities and affairs of the company shall be decided exclusively by the managers.

(2) Each manager shall have equal rights in the management and conduct of the activities and affairs of the company.

(3) A difference arising among managers as to a matter in the ordinary

course of the activities and affairs of the company may be decided by a majority of the managers.

(4) The consent of all members shall be required to:

(A) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the good will, outside the ordinary course of the company's activities and affairs;

(B) Approve a merger or domestication under subchapter IX of this chapter or transaction under Chapter 2 of this title;

(C) Undertake any other act outside the ordinary course of the company's activities and affairs; and

(D) Amend the operating agreement.

(5) A manager may be chosen at any time by the consent of a majority of the members and shall remain a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

(6) A person need not be a member to be a manager, but the dissociation of a member that is also a manager shall remove the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation shall not by itself dissociate the person as a member.

(7) A person's ceasing to be a manager shall not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

(d) An action requiring the consent of members under this chapter may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(e) The dissolution of a limited liability company shall not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

(f) This chapter shall not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities and affairs of the company.

(g) A limited liability company shall reimburse a member for an advance to the company beyond the amount of capital the member agreed to contribute.

(h) A payment or advance made by a member which gives rise to an obligation of the limited liability company under subsection (g) of this section or under § 29-804.08(a) constitutes a loan to the company which accrues interest from the date of the payment or advance.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(5)(F), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "Except as otherwise expressly provided in this chapter, the" for "The" at the beginning of (b)(1);

substituted “activities and affairs” for “activities” in (b), (c) and (f); substituted “activities and affairs of the company may” for “activities of the company shall” in (b)(4); substituted “may” for “shall” in (b)(5); and added (g) and (h).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-804.08. Reimbursement, indemnification, advancement, and insurance.

(a) A limited liability company shall reimburse for any payment made, and indemnify for any debt, obligation, or other liability incurred, by a member of a member-managed company or the manager of a manager-managed company in the course of the member’s or manager’s activities on behalf of the company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in §§ 29-804.05 and 29-804.09.

(b) A limited liability company may purchase insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under § 29-801.07(c)(13), the operating agreement could not eliminate or limit the person’s liability to the company for the conduct giving rise to the liability.

(c) In the ordinary course of its activities and affairs, a limited liability company may advance reasonable expenses, including attorney’s fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person’s former or present capacity as a member or manager, if the person promises to repay the company if the person ultimately is determined not to be entitled to be indemnified under subsection (a) of this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(5)(G), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Reimbursement, indemnification, advancement,” for “Indemnification” in the section heading; substituted “§ 29-801.07(c)(13)” for “§ 29-801.07(g)” in (b); and added (c).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-804.09. Standards of conduct for members and managers.

(a) A member of a member-managed limited liability company owes to the company and, subject to § 29-808.01(b), the other members the duties of loyalty and care stated in subsections (b) and (c) of this section.

(b) The duty of loyalty of a member in a member-managed limited liability company shall include the duties to:

(1) Account to the company and to hold as trustee for it any property, profit, or benefit derived by the member:

- (A) In the conduct or winding up of the company's activities and affairs;
- (B) From a use by the member of the company's property; or
- (C) From the appropriation of a limited liability company opportunity;

(2) Refrain from dealing with the company in the conduct or winding up of the company's activities and affairs as or on behalf of a person having an interest adverse to the company; and

(3) Refrain from competing with the company in the conduct of the company's activities and affairs before the dissolution of the company.

(c) The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the company's activities and affairs requires the member to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or a knowing violation of law.

(d) A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties and obligations under this chapter or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) It shall be a defense to a claim under subsection (b)(2) of this section and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(f) All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(g) A member does not violate a duty or obligation under this chapter or under the operating agreement solely because the member's conduct furthers the member's own interest.

(h) If, as permitted by subsection (f) of this section or the operating agreement, a member enters into a transaction with the limited liability company which otherwise would be prohibited by subsection (b)(2) of this section, the member's rights and obligations arising from the transaction are the same as those of a person that is not a member.

(i) In a manager-managed limited liability company, the following rules apply:

(1) Subsections (a), (b), (c), and (e) of this section shall apply to the managers and not the members.

(2) The duty stated under subsection (b)(3) of this section shall continue until winding up is completed.

(3) Subsection (d) of this section shall apply to the members and managers.

(4) Subsections (f) and (g) of this section shall apply only to the members.

(5) A member shall not have any fiduciary duty to the company or to any other member solely by reason of being a member.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(5)(H), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 deleted “fiduciary” preceding “duties” in (a); substituted “activities and affairs” for “activities” in (b); re-wrote (c); substituted “duties and obligations” for “duties” in (d); redesignated former (g) as present (i); in present (i)(4) substituted “Subsections (f) and (g)” for “Subsection (f)”; and added present (g) and (h).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-804.10. Right of members, managers, and dissociated members to information.

(a) In a member-managed limited liability company, the following rules shall apply:

(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company’s activities and affairs, financial condition, and other circumstances, to the extent the information is material to the member’s rights and duties under the operating agreement or this chapter.

(2) The company shall furnish to each member:

(A) Without demand, any information concerning the company’s activities and affairs, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member’s rights and duties under the operating agreement or this chapter, except to the extent the company can establish that it reasonably believes the member already knows the information; and

(B) On demand, any other information concerning the company’s activities and affairs, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(3) The duty to furnish information under paragraph (2) of this subsection shall also apply to each member to the extent the member knows any of the information described in paragraph (2) of this subsection.

(b) In a manager-managed limited liability company, the following rules shall apply:

(1) The informational rights stated in subsection (a) of this section and the duty stated in subsection (a)(3) of this section apply to the managers and not the members.

(2) During regular business hours and at a reasonable location specified by the company, a member may obtain from the company, and inspect and copy, full information regarding the activities and affairs, financial condition, and other circumstances of the company as is just and reasonable if:

(A) The member seeks the information for a purpose material to the member’s interest as a member;

(B) The member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(C) The information sought is directly connected to the member's purpose.

(3) Within 10 days after receiving a demand pursuant to paragraph (2)(B) of this subsection, the company shall in a record inform the member that made the demand:

(A) Of the information that the company will provide in response to the demand and when and where the company will provide the information; and

(B) If the company declines to provide any demanded information, the company's reasons for declining.

(4) Whenever this chapter or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the company shall, without demand, provide the member with all information that is known to the company and is material to the member's decision.

(c) On 10 days' demand made in a record received by a limited liability company, a dissociated member shall have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection (b)(2) of this section. The company shall respond to a demand made pursuant to this subsection in the manner provided in subsection (b)(3) of this section.

(d) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(e) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection (g) of this section shall apply both to the agent or legal representative and the member or dissociated member.

(f) The rights under this section shall not extend to a person as transferee.

(g) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company shall have the burden of proving reasonableness.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(5)(I), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "activities and affairs" for "activities" throughout the section.

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C.

Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter V. Transferable Interests and Rights of Transferees and Creditors.

§ 29-805.01. Nature of transferable interest.

A transferable interest is personal property.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(6)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “is” for “shall be.”

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-805.02. Transfer of transferable interest.

(a) Subject to § 29-805.03(f), a transfer, in whole or in part, of a transferable interest:

(1) Is permissible;

(2) Shall not by itself cause a member’s dissociation or a dissolution and winding up of the limited liability company’s activities and affairs; and

(3) Subject to § 29-805.04, shall not entitle the transferee to:

(A) Participate in the management or conduct of the company’s activities and affairs; or

(B) Except as otherwise provided in subsection (c) of this section, have access to records or other information concerning the company’s activities and affairs.

(b) A transferee shall have the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(c) In a dissolution and winding up of a limited liability company, a transferee shall be entitled to an account of the company’s transactions only from the date of dissolution.

(d) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(e) A limited liability company need not give effect to a transferee’s rights under this section until the company has notice of the transfer.

(f) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement shall be ineffective as to a person having notice of the restriction at the time of transfer.

(g) Except as otherwise provided in § 29-806.02(4)(B), when a member transfers a transferable interest, the transferor shall retain the rights of a member other than the interest in distributions transferred and shall retain all duties and obligations of a member.

(h) If a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee shall be liable for the member's obligations under §§ 29-804.03 and 29-804.06(c) known to the transferee when the transferee becomes a member.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(6)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Subject to § 29-805.03(f), a transfer” for “A transfer” in the introductory language of (a); substituted “activities and affairs” for “activities” throughout (a); and substituted “If” for “When” at the beginning of (h).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-805.03. Charging order.

(a) On application by a judgment creditor of a member or transferee, the Superior Court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. Except as otherwise provided in subsection (f) of this section, a charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a) of this section, the Superior Court may:

(1) Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) Make all other orders necessary to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the Superior Court may foreclose the lien and order the sale of the transferable interest. Except as otherwise provided in subsection (f) of this section, the purchaser at the foreclosure sale shall obtain the transferable interest, shall not thereby become a member, and shall be subject to § 29-805.02.

(d) At any time before foreclosure under subsection (c) of this section, the member or transferee whose transferable interest is subject to a charging order under subsection (a) of this section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the Superior Court.

(e) At any time before foreclosure under subsection (c) of this section, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) If a court orders foreclosure of a charging order lien against the sole member of a limited liability company:

- (1) The court shall confirm the sale;
- (2) The purchaser at the sale obtains the member's entire interest, not only the member's transferable interest;
- (3) The purchaser thereby becomes a member; and
- (4) The person whose interest was subject to the foreclosed charging order is dissociated as a member.

(g) This chapter shall not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

(h) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(6)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "Except as otherwise provided in subsection (f) of this section, a charging order constitutes" for "A charging order shall constitute" in (a); substituted "Except as otherwise provided in subsection (f) of this section, the purchaser" for "The purchaser" in (c); redesignated former (f)

and (g) as present (g) and (h), respectively; and added present (f).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VI. Member's Dissociation.

§ 29-806.01. Member's power to dissociate; wrongful dissociation.

(a) A person may dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under § 29-806.02(1).

(b) A person's dissociation from a limited liability company shall be wrongful only if the dissociation:

- (1) Is in breach of an express provision of the operating agreement; or
- (2) Occurs before the completion of the winding up of the company and:
 - (A) The person withdraws as a member by express will;
 - (B) The person is expelled as a member by judicial order under § 29-80.602(5) [§ 29-806.02(5)];

(C) The person is dissociated under § 29-806.02(7)(A) by becoming a debtor in bankruptcy; or

(D) In the case of a person that is not a trust (other than a business trust), an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a member shall be liable to the limited liability company and, subject to § 29-808.01, to the other members for damages caused by the dissociation. The liability shall be in addition to any other debt, obligation, or other liability of the member to the company or the other members.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(7)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “completion of the winding up” for “termination” in (b)(2).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-806.02. Events causing dissociation.

A person shall be dissociated as a member from a limited liability company when:

(1) The company has notice of the person’s express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date;

(2) An event stated in the operating agreement as causing the person’s dissociation occurs;

(3) The person is expelled as a member pursuant to the operating agreement;

(4) The person is expelled as a member by the unanimous consent of the other members if:

(A) It is unlawful to carry on the company’s activities and affairs with the person as a member;

(B) There has been a transfer of all of the person’s transferable interest in the company, other than:

(i) A transfer for security purposes; or

(ii) A charging order in effect under § 29-805.03 which has not been foreclosed;

(C) The person is a corporation and, within 90 days after the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated; or

(D) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) On application by the company, the person is expelled as a member by judicial order because the person has:

(A) Engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company’s activities and affairs;

(B) Willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person’s duties or obligations under § 29-804.09; or

(C) Engaged in, or is engaging, in conduct relating to the company’s activities which makes it not reasonably practicable to carry on the activities with the person as a member;

- (6) In the case of a person who is an individual:
 - (A) The person dies; or
 - (B) In a member-managed limited liability company:
 - (i) A guardian or general conservator for the person is appointed; or
 - (ii) There is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under this chapter or the operating agreement;
- (7) In a member-managed limited liability company, the person:
 - (A) Becomes a debtor in bankruptcy;
 - (B) Executes an assignment for the benefit of creditors; or
 - (C) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;
- (8) In the case of a person that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed;
- (9) In the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed;
- (10) In the case of a member that is not an individual, unincorporated entity, corporation, trust, or estate, the termination of the member;
- (11) The company participates in a merger under subchapter IX of this chapter or transaction under Chapter 2 of this title, if:
 - (A) The company is not the surviving entity; or
 - (B) Otherwise as a result of the merger, the person ceases to be a member;
- (12) The company participates in a domestication under subchapter IX of this chapter, if, as a result of the domestication, the person ceases to be a member;
- (13) The company participates in an interest exchange under Chapter 2 of this title and, as a result of the interest exchange, the person ceases to be a member;
- (14) The person's entire interest is transferred in a foreclosure sale under § 29-805.03(f); or
- (15) The company dissolves and completes winding up.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(7)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” in (4)(A) and (5)(A); substituted “testamentary or inter vivos trust” for “trust” in (8); substituted “unincorporated entity” for “partnership, limited liability company” in (10); redesignated former (13) as present (15); in present (15) substituted “dissolves and completes winding up” for “ter-

minates”; and added present (13) and (14) and made a related change.

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-806.03. **Effect of person’s dissociation as member.**

- (a) When a person is dissociated as a member of a limited liability company:
 - (1) The person’s right to participate as a member in the management and conduct of the company’s activities and affairs shall terminate;
 - (2) If the company is member-managed, the person’s duties and obligations under § 29-804.09 end with regard to matters arising and events occurring after the person’s dissociation; and
 - (3) Subject to § 29-805.04, subchapter IX of this chapter, and Chapter 2 of this title, any transferable interest owned by the person immediately before dissociation in the person’s capacity as a member is owned by the person solely as a transferee.
 - (b) A person’s dissociation as a member of a limited liability company shall not of itself discharge the person from any debt, obligation, or other liability to the company or the other members which the person incurred while a member.
- (July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(7)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” in (a)(1); and substituted “duties and obligations under § 29-804.09” for “fiduciary duties as a member shall” in (a)(2).

Legislative history of Law 19-210. — See note to § 29-801.02.
Editor’s notes.
 Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VII. Dissolution and Winding up.

§ 29-807.01. **Events causing dissolution.**

- (a) A limited liability company is dissolved, and its activities and affairs shall be wound up, upon the occurrence of any of the following:
 - (1) An event or circumstance that the operating agreement states causes dissolution;
 - (2) The consent of all the members;
 - (3) The passage of 90 consecutive days during which the company has no members, unless:
 - (A) Consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and
 - (B) At least one person becomes a member in accordance with the consent;
 - (4) On application by a member, the entry by Superior Court of an order dissolving the company on the grounds that:
 - (A) The conduct of all or substantially all of the company’s activities and affairs is unlawful; or
 - (B) It is not reasonably practicable to carry on the company’s activities and affairs in conformity with the certificate of organization and the operating agreement.
 - (5) On application by a member, the entry by Superior Court of an order

dissolving the company on the grounds that the managers or those members in control of the company:

(A) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(B) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

(6) The signing and filing of a statement of administrative dissolution by the Mayor under § 29-106.02.

(b) In a proceeding brought under subsection (a)(5) of this section, the Superior Court may order a remedy other than dissolution.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(8)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” in the introductory language of (a) and twice in (a)(4); rewrote (a)(3); added (a)(6); and made related changes.

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-807.02. Winding up.

(a) A dissolved limited liability company shall wind up its activities and affairs, and, except as otherwise provided in § 29-807.06, shall continue after dissolution only for the purpose of winding up.

(b) In winding up its activities and affairs, a limited liability company:

(1) Shall:

(A) Discharge the company’s debts, obligations, or other liabilities, settle and close the company’s activities and affairs, and marshal and distribute the assets of the company; and

(B) Deliver to the Mayor for filing a statement of dissolution stating the name of the company and that the company is dissolved; and

(2) May:

(A) Preserve the company activities and affairs and property as a going concern for a reasonable time;

(B) Prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(C) Transfer the company’s property;

(D) Settle disputes by mediation or arbitration;

(E) Deliver to the Mayor for filing a statement of termination stating the name of the company and that the company is terminated; and

(F) Perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities and affairs of the company. If the person does so, the person shall have the powers of a sole manager under § 29-804.07(c) and shall be deemed to be a manager for the purposes of § 29-803.04(a)(2).

(d) If the legal representative under subsection (c) of this section declines or fails to wind up the company’s activities and affairs, a person may be appointed

to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

(1) Has the powers of a sole manager under § 29-804.07(c) and shall be deemed to be a manager for the purposes of § 29-803.04(a)(2); and

(2) Shall promptly deliver to the Mayor for filing an amendment to the company's certificate of organization to:

(A) State that the company has no members;

(B) State that the person has been appointed pursuant to this subsection to wind up the company; and

(C) Provide the street and mailing addresses of the person.

(e) The Superior Court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities and affairs:

(1) On application of a member, if the applicant establishes good cause;

(2) On the application of a transferee, if:

(A) The company does not have any members;

(B) The legal representative of the last person to have been a member declines or fails to wind up the company's activities and affairs; and

(C) Within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (d) of this section; or

(3) In connection with a proceeding under § 29-807.01(a)(4) or (5).

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(8)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” throughout the section; and substituted “except as otherwise provided in § 29-807.06, shall continue” for “the company shall continue” in (a).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-807.04. Other claims against dissolved limited liability company.

(a) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) The notice authorized by subsection (a) of this section shall:

(1) Be published at least once in a newspaper of general circulation in the District;

(2) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(3) State that a claim against the company is barred unless an action to enforce the claim is commenced within 3 years after publication of the notice.

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b) of this section, unless the claimant commences an action to enforce the claim against the company within 3 years after the publication date of the notice, the claim of each of the following claimants shall be barred:

(1) A claimant that did not receive notice in a record under § 29-807.03;
(2) A claimant whose claim was timely sent to the company but not acted on; and

(3) A claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(d) A claim not barred under this section or § 29-807.03 may be enforced:

(1) Against a dissolved limited liability company, to the extent of its undistributed assets; and

(2) If assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph shall not exceed the total amount of assets distributed to the person after dissolution.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(8)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “this section or § 29-807.03” for “this section” in (d).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-807.05. Distribution of assets in winding up limited liability company's activities and affairs.

(a) In winding up its activities and affairs, a limited liability company shall apply its assets to discharge its obligations to creditors, including members that are creditors.

(b) After a limited liability company complies with subsection (a) of this section, any surplus shall be distributed in the following order, subject to any charging order in effect under § 29-805.03:

(1) To each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) In equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under § 29-805.02.

(c) If a limited liability company does not have sufficient surplus to comply with subsection (b)(1) of this section, any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

(d) All distributions made under subsections (b) and (c) of this section must be paid in money.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(8)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” in the section heading and in (a).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-807.06. **Rescinding dissolution.**

(a) A limited liability company may rescind its dissolution unless a statement of termination applicable to the company becomes effective, the Superior Court has entered an order under § 29-807.01(a)(4) or (5) dissolving the company, or the Mayor has dissolved the company under § 29-106.02.

(b) Rescinding dissolution under this section requires:

(1) The consent of each member;

(2) If a statement of dissolution applicable to the limited liability company has been filed by the Mayor but has not become effective, the delivery to the Mayor for filing of a statement of withdrawal under § 29-102.04 applicable to the statement of dissolution; and

(3) If a statement of dissolution applicable to the limited liability company is effective, the delivery to the Mayor for filing of a statement of correction under § 29-102.05 stating that dissolution has been rescinded under this section.

(c) If a limited liability company rescinds its dissolution:

(1) The company resumes carrying on its activities and affairs as if dissolution never occurred;

(2) Subject to paragraph (3) of this subsection, any liability incurred by the company after the dissolution but before the rescission is effective is determined as if the dissolution never occurred; and

(3) The rights of a third party arising out of actions taken by the third party in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

(Mar. 5, 2013, D.C. Law 19-210, § 2(h)(8)(E), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-801.02.

210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor’s notes. — Application of Law 19-

§ 29-807.07. **Court proceedings.**

(a) A dissolved limited liability company that has published a notice under § 29-807.04 may file an application with the Superior Court, or, if the principal office is not located in the District, in an appropriate court where the company’s principal office is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the company, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved company, are reasonably expected to arise after the effective date of dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under § 29-807.04(c).

(b) Not later than 10 days after the filing of an application under subsection (a) of this section, the dissolved limited liability company shall give notice of the proceeding to each claimant holding a contingent claim known to the company.

(c) In any proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability company.

(d) A dissolved limited liability company that provides security in the amount and form ordered by the court under subsection (a) of this subsection satisfies the company's obligations with respect to claims that are contingent, have not been made known to the company, or are based on an event occurring after the effective date of dissolution. Such claims may not be enforced against a member or transferee that received assets in liquidation.

(Mar. 5, 2013, D.C. Law 19-210, § 2(h)(8)(E), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

Subchapter VIII. Actions by Members.

§ 29-808.03. Proper plaintiff.

A derivative action to enforce a right of a limited liability company may be maintained only by a person that is a member at the time the action is commenced and:

- (1) Was a member when the conduct giving rise to the action occurred; or
- (2) Whose status as a member was derived, by operation of law or pursuant to the terms of the operating agreement, from a person that was a member at the time the conduct giving rise to the action occurred.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(9)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-808.05. Special litigation committee.

(a) If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the Superior Court shall stay discovery for the time reasonably necessary to permit the committee

to make its investigation. This subsection shall not prevent the court from enforcing a person's right to information under § 29-804.10 or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee may be composed of one or more disinterested and independent individuals, who may be members.

(c) A special litigation committee may be appointed:

(1) In a member-managed limited liability company:

(A) By the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and

(B) If all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or

(2) In a manager-managed limited liability company:

(A) By a majority of the managers not named as defendants or plaintiffs in the proceeding; and

(B) If all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

(1) Continue under the control of the plaintiff;

(2) Continue under the control of the committee;

(3) Be settled on terms approved by the committee; or

(4) Be dismissed.

(e) After making a determination under subsection (d) of this section, a special litigation committee shall file with the Superior Court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) of this section and allow the action to proceed under the direction of the plaintiff.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(9)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “and shall serve each party with a copy of the determination and report” for “giving notice to the plaintiff” in (e).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-808.06. Proceeds and expenses.

(a) Except as otherwise provided in subsection (b) of this section:

(1) Any proceeds or other benefits of a derivative action under § 29-808.02, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

(2) If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

(b) If a derivative action under § 29-808.02 is successful in whole or in part, the Superior Court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.

(c) A derivative action on behalf of a limited partnership may not be voluntarily dismissed or settled without the Superior Court's approval.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(h)(9)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added (c).

Legislative history of Law 19-210. — See note to § 29-801.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

CHAPTER 9. GENERAL COOPERATIVE ASSOCIATIONS.

Sec.
29-905. Powers of association.
29-909. Bylaws — Contents.
29-910. Meetings; regular and special.
29-911. Meetings; regular and special — Notice.
29-912. Meetings; regular and special — Units of membership.
29-915. Voting — By mail or by electronic mail.
29-916. Voting provisions — Application to voting by mail or electronic mail.
29-917. Voting provisions — Application to voting by delegates.

Sec.
29-918. Directors.
29-919. Officers.
29-920. Removal of directors and officers; vote required for approval; vacancies.
29-934. Dissolution; methods; vote required for approval; distribution of assets.
29-935. Existing cooperative groups; acceptance of act; filing and recordation of amended articles and bylaws.

§ 29-905. Powers of association.

An association shall have the capacity to act possessed by individuals and the authority to do anything required or permitted by this chapter. In addition, an association has the power to:

- (1) Continue as a corporation for the time specified in its articles;
- (2) Have a corporate seal and to alter the same at pleasure;
- (3) Sue and be sued in its corporate name;
- (4) Make bylaws for the government and regulation of its affairs;
- (5) Acquire, own, hold, sell, lease, pledge, mortgage, or otherwise dispose of any property incident to its purposes and activities and affairs;
- (6)(A) Own and hold:

(i) Membership in, and share capital, of other associations and any other corporations;

(ii) Any types of bonds or other obligations; and

(B) While the owner of the items set forth in subparagraph (A) of this paragraph, to exercise all the rights of ownership;

(7) Borrow money, contract debts, and make contracts, including agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;

(8) Conduct its affairs within or without the District;

(9) Exercise, in addition, any power granted to ordinary business corporations, except those powers inconsistent with this chapter; and

(10) Exercise all powers not inconsistent with this chapter which may be necessary, convenient, or expedient for the accomplishment of its purposes.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(i)(2), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” in (5).

Legislative history of Law 19-210. — Law 19-210, the “District of Columbia Official Code Title 29 Technical and Harmonizing Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-532. The Bill was adopted on first and second readings on July

10, 2012, and Oct. 2, 2012, respectively. Signed by the Mayor on Oct. 31, 2012, it was assigned Act No. 19-512 and transmitted to Congress for its review. D.C. Law 19-210 became effective on Mar. 5, 2013.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-909. Bylaws — Contents.

The bylaws may, within the limitations of this chapter, provide for the:

(1) Method and terms of admission to membership and the disposal of members’ interests on cessation of membership for any reason;

(2) Time, place, and manner of calling and conducting meetings;

(3) Number or percentage of the members constituting a quorum;

(4)(A) Number, qualifications, powers, duties, term of office, and manner, time, and vote for election, of directors and officers; and

(B) Division or classification, if any, of directors to provide for rotating or overlapping terms;

(5) Compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;

(6) Method of distributing the net savings; or

(7) Various discretionary provisions of this chapter as well as other provisions incident to the purposes and activities and affairs of the association.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(i)(3), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities” in (7).

Legislative history of Law 19-210. — See note to § 29-905.

Editor’s notes. — Application of Law 19-

210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-910. Meetings; regular and special.

Regular meetings of members shall be held as prescribed in the bylaws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least 10% of the membership, in which case it shall be the duty of the secretary to call such meeting to take place within 30 days after the demand. Regular or special meetings, including meetings by units as hereinafter provided, may be held inside or outside the District as the articles may prescribe. If authorized by the articles or bylaws, members may participate in regular and special meetings of members remotely in accordance with § 29-305.09.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(i)(4), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added the last sentence.

Legislative history of Law 19-210. — See note to § 29-905.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-911. Meetings; regular and special — Notice.

The secretary shall give notice of the time and place of meetings by sending a notice thereof to each member at the member's last known address not less than the number of days in advance of the meeting specified in the bylaws. In case of a special meeting, the notice shall specify the purpose for which the meeting is called. If authorized by the articles or bylaws, the notice may be sent by electronic mail in accordance with § 29-305.09.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(i)(5), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added the last sentence.

Legislative history of Law 19-210. — See note to § 29-905.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-912. Meetings; regular and special — Units of membership.

The articles or bylaws may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes there cast to the central meeting, or for a method of representation by the election of delegates to the central meeting, or for a combination of both of these methods. If authorized by the articles or the bylaws, members may participate in such meetings remotely in accordance with § 29-305.09.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(i)(6), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added the last sentence.

Legislative history of Law 19-210. — See note to § 29-905.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-915. Voting — By mail or by electronic mail.

(a) The articles or bylaws may provide for either or both of the following types of voting by mail or by electronic mail in accordance with § 29-305.09[.]

(1) That the secretary shall send to the members a copy of any proposal scheduled to be offered at a meeting, together with the notice of the meeting, and that the mail votes or the electronic mail votes by the members shall be counted together with those cast at the meeting if the mail votes or the electronic mail votes are returned to the association within a specified number of days; and

(2) That the secretary shall send to any member absent from a meeting an exact copy of the proposal acted upon at the meeting, and that the mail vote or the electronic mail vote of the member upon such proposal, if returned within a specified number of days, shall be counted together with the votes cast at the meeting.

(b) The articles or bylaws may also determine whether and to what extent the mail votes or the electronic mail votes shall be counted in computing a quorum.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(i)(7), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added “or by electronic mail” at the end of the section heading; added “or by electronic mail in accordance with § 29-305.09” in the introductory language of (a); and added “or the electronic mail vote” and “or the electronic mail votes” throughout (a) and (b).

Legislative history of Law 19-210. — See note to § 29-905.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-916. Voting provisions — Application to voting by mail or electronic mail.

If the articles or bylaws have provided for voting by mail or by electronic mail, any provision of this chapter referring to votes cast by the members must be construed to include the votes cast by mail or by electronic mail.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(i)(8), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-905.

Editor's notes. — Application of Law 19-

210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-917. Voting provisions — Application to voting by delegates.

If an association has provided for voting by delegates, any provision of this chapter referring to votes cast by the members shall apply to votes cast by delegates, but this shall not permit delegates to vote by mail or electronic mail.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(i)(9), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added “or electronic mail” at the end of the section.

Legislative history of Law 19-210. — See note to § 29-905.

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-918. Directors.

(a) An association shall be managed by a board of not less than 5 directors, who are elected for a term fixed in the bylaws, not to exceed 3 years, by and from the members of the association and hold office until their successors are elected or until removed. The bylaws of an association that provides multi-family cooperative housing for low and moderate income individuals who are receiving assistance through one or more of the federal programs described in § 47-1002(20) may provide that one or more of the directors, but not a majority of the directors, may be appointed by a nonprofit sponsoring organization which helped create the association so as to maintain a continuing and stabilizing interest in its well-being; provided, that the sponsoring organization shall not appoint any directors after the association has been established for 10 years. The director or directors appointed by the sponsoring organization need not be members of the association. Vacancies in the board of directors, otherwise than by removal or expiration of term, shall be filled in such manner as the bylaws may provide.

(b) The bylaws may provide for a method of apportioning the number of directors among the units into which the association may be divided and for the election of directors by the respective units to which they are apportioned.

(c) An executive committee of the board of directors may be elected in such manner and with such powers and duties as the articles or bylaws may prescribe.

(d) Meetings of directors and of the executive committee may be held inside or outside the District.

(e) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(i)(10), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added (e).

Legislative history of Law 19-210. — See note to § 29-905.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-919. Officers.

The officers of an association shall include a president, one or more vice-presidents, a secretary and a treasurer, or a secretary-treasurer. The officers shall be elected annually by the directors unless the bylaws otherwise provide. The president and at least one vice-president shall be directors, but no other officer need be a director.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(i)(11), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “shall include” for “include.”

Legislative history of Law 19-210. — See note to § 29-905.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-920. Removal of directors and officers; vote required for approval; vacancies.

A director or officer may be removed, with or without cause, by a vote of $\frac{2}{3}$ of the members voting at a regular or special meeting. The director or officer involved shall have an opportunity to be heard in person or by counsel at the meeting. A vacancy caused by any such removal shall be filled by the vote provided in the bylaws for election of directors, if the bylaws provide for a means of electing or appointing officers that means.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(i)(12), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-905.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-934. Dissolution; methods; vote required for approval; distribution of assets.

An association may, at any regular or special meeting legally called, be directed to dissolve by a vote of $\frac{2}{3}$ of the entire membership. By a vote of a majority of the members voting, 3 members shall be designated as trustees, who shall, on behalf of the association and within a time fixed in their designation or within any extension thereof, liquidate its assets, and shall distribute them in the manner set forth in this section. The association shall

file a statement of dissolution with the Mayor. An action in the Superior Court for judicial dissolution of an association organized under this chapter may be instituted for the causes and prosecuted in the manner set forth in part B of subchapter XII of Chapter 4 of this title; provided, that any distribution of assets shall be in the manner set forth in this section. In case of any dissolution of an association, its assets shall be distributed in the following manner and order:

(1) Payment of its debts and expenses;

(2) Returning to members the par value of their shares or of their membership certificates, return to the subscribers the amounts paid on their subscriptions, and returning to the patrons the amount of savings returns credited to their accounts toward the purchase of shares or membership certificates; and

(3) Distribution of any surplus in either or both of the following ways as the articles may provide:

(A) Among those patrons who have been members or subscribers at any time during the past 6 years, on the basis of their patronage during that period; or

(B) As a gift to any consumers' cooperative association or other non-profit enterprise which may be designated in the articles.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(i)(13), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “part B of subchapter XII of Chapter 4 of this title” for “part B of subchapter XII of Chapter 3 of this title” in the introductory paragraph.

Legislative history of Law 19-210. — See note to § 29-905.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-935. Existing cooperative groups; acceptance of act; filing and recordation of amended articles and bylaws.

Any group incorporated under another law of the District and operating on a cooperative basis or any unincorporated group operating on such a basis in the District may elect by a vote of $\frac{2}{3}$ of the members voting to secure the benefits of and be bound by this chapter, and shall thereupon amend the parts of its articles and bylaws as are not in conformity with this chapter. A certified copy of the amended articles shall be delivered to the Mayor for filing.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(i)(14), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “delivered to the Mayor for filing” for “filed with the Mayor.”

Legislative history of Law 19-210. — See note to § 29-905.

Editor's notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

CHAPTER 10. LIMITED COOPERATIVE ASSOCIATIONS.

Subchapter I. General Provisions

Sec.

29-1001.02. Definitions.

29-1001.05. Powers.

29-1001.13. Approval of entity transaction by limited cooperative association.

Subchapter II. Filing

29-1002.01. Signing of records delivered for filing to Mayor.

29-1002.02. Signing and filing of records pursuant to judicial order.

Subchapter V. Members

29-1005.02. Becoming member.

29-1005.03. No agency power of member as member.

29-1005.04. Liability of members and managers.

29-1005.05. Right of member and former member to information.

Subchapter VI. Member's Interest in Limited Cooperative Association

29-1006.05. Charging order.

Subchapter X. Contributions, Allocations, and Distributions

Sec.

29-1010.07. Limitations on distributions.

29-1010.08. Liability for improper distributions; limitation of action.

Subchapter XI. Dissociation

29-1011.01. Member's dissociation.

29-1011.02. Effect of dissociation as member.

29-1011.03. Power of legal representative of member.

Subchapter XII. Dissolution

29-1012.06. Winding up.

29-1012.07. Distribution of assets in winding up limited cooperative association.

29-1012.08. Known claims against dissolved limited cooperative association.

29-1012.09. Other claims against dissolved limited cooperative association.

29-1012.10. Court proceedings.

29-1012.13. Rescinding dissolution.

Subchapter XIII. Action by Member

29-1013.01. Derivative action.

29-1013.03. Pleading.

29-1013.06. Special litigation committee.

Subchapter I. General Provisions.

§ 29-1001.02. Definitions.

For the purposes of this chapter, the term:

(1) "Board of directors" means the board of directors of a limited cooperative association.

(2) "Bylaws" means the bylaws of a limited cooperative association. The term "bylaws" shall include the bylaws as amended or restated.

(3) "Contribution", except as used in § 29-1010.08(c), means a benefit that a person provides to a limited cooperative association to become or remain a member or in the person's capacity as a member.

(4) "Cooperative" means a limited cooperative association or an entity organized under any cooperative law of any jurisdiction.

(5) "Director" means a director of a limited cooperative association.

(6) "Distribution", except as used in § 29-1010.07(e), means a transfer of money or other property from a limited cooperative association to a member because of the member's financial rights or to a transferee of a member's financial rights.

(7) "Financial rights" means the right to participate in allocations and distributions as provided in subchapters X and XII of this chapter, but shall not include rights or obligations under a marketing contract governed by subchapter VII of this chapter.

(8) “Foreign cooperative” means an entity organized in a jurisdiction other than the District under a law similar to this chapter.

(9) “Investor member” means a member that has made a contribution to a limited cooperative association and is not:

(A) Required by the organic rules to conduct patronage with the association in the member’s capacity as an investor member to receive the member’s interest; or

(B) Permitted by the organic rules to conduct patronage with the association in the member’s capacity as an investor member in order to receive the member’s interest.

(10) “Limited cooperative association”, “domestic limited cooperative association”, “association”, or “domestic association” means an association formed under this chapter or that becomes subject to this title under Chapter 2 of this title.

(11) “Member” means a person that is admitted as a patron member or investor member, or both, in a limited cooperative association. The term “member” shall not include a person that has dissociated as a member.

(12) “Member’s interest” means the interest of a patron member or investor member under § 29-1006.01.

(13) “Members meeting” means an annual members meeting or special meeting of members.

(14) “Organizer” means an individual who signs the initial articles of organization.

(15) “Patron member” means a member that has made a contribution to a limited cooperative association and is:

(A) Required by the organic rules to conduct patronage with the association in the member’s capacity as a patron member to receive the member’s interest; or

(B) Permitted by the organic rules to conduct patronage with the association in the member’s capacity as a patron member to receive the member’s interest.

(16) “Patronage” means business transactions between a limited cooperative association and a person which entitle the person to receive financial rights based on the value or quantity of business done between the association and the person.

(17) “Registered foreign cooperative” means a foreign cooperative that is registered to do business in this state pursuant to a statement of registration filed by the Mayor.

(18) “Required information” means the information a limited cooperative association is required to maintain under § 29-1001.10.

(19) “Voting group” means any combination of one or more voting members in one or more districts or classes that under the organic rules or this chapter are entitled to vote and can be counted together collectively on a matter at a members meeting.

(20) “Voting member” means a member that, under the organic law or organic rules, has a right to vote on matters subject to vote by members under the organic law or organic rules.

(21) “Voting power” means the total current power of members to vote on a particular matter for which a vote may or is to be taken.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(2)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “formed under this chapter or that becomes subject to this title under Chapter 2 of this title” for “organized under this chapter” in (10); redesignated former (17) through (20) as present (18) through (21), respectively; and added present (17).

Legislative history of Law 19-210. — Law 19-210, the “District of Columbia Official Code Title 29 Technical and Harmonizing Amendments Act of 2012,” was introduced in Council

and assigned Bill No. 19-532. The Bill was adopted on first and second readings on July 10, 2012, and Oct. 2, 2012, respectively. Signed by the Mayor on Oct. 31, 2012, it was assigned Act No. 19-512 and transmitted to Congress for its review. D.C. Law 19-210 became effective on Mar. 5, 2013.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1001.05. Powers.

A limited cooperative association may sue and be sued in its own name and do all things necessary or convenient to carry on its activities affairs. An association may maintain an action against a member for harm caused to the association by the member’s violation of a duty to the association or of the organic law or organic rules.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(2)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities and affairs” for “activities.”

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1001.13. Approval of entity transaction by limited cooperative association.

(a) For a limited cooperative association to approve an entity transaction under subchapter XV of this chapter or Chapter 2 of this title, a plan must be approved by a majority of the board of directors, or a greater percentage if required by the organic rules, and the board of directors must call a members meeting to consider the plan, hold the meeting not later than 90 days after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:

- (1) The plan, or a summary of the plan and a statement of the manner in which a copy of the plan in a record may be reasonably obtained by a member;
- (2) A recommendation that the members approve the plan, or if the board determines that because of a conflict of interest or other circumstances it should not make a favorable recommendation, the basis for that determination;
- (3) A statement of any condition of the board’s submission of the plan to the members; and

(4) Notice of the meeting at which the plan will be considered, which must be given in the same manner as notice of a special meeting of members.

(b) Subject to subsections (c) and (d) of this section, a plan must be approved by:

(1) At least two-thirds of the voting power of members present at a members meeting called under subsection (a) of this section; and

(2) If the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.

(c) The organic rules may require that the percentage of votes under subsection (b)(1) of this section is:

(1) A different percentage that is not less than a majority of members voting at the meeting;

(2) Measured against the voting power of all members; or “(3) A combination of paragraphs (1) and (2) of this subsection.

(d) The vote required to approve a plan may not be less than the vote required for the members of the limited cooperative association to amend the articles of organization.

(e) Consent in a record to a plan by a member must be delivered to the limited cooperative association before delivery to the Mayor for filing of articles of merger, interest exchange, conversion, or domestication, if, as a result of the merger, interest exchange, conversion, or domestication, the member will have interest holder liability for debts, obligations, or other liabilities that arise after the transaction becomes effective.

(f) The voting requirements for districts, classes, or voting groups under § 29-1004.04 apply to the approval of a transaction under this title.

(Mar. 5, 2013, D.C. Law 19-210, § 2(j)(2)(C), 59 DCR 13171.)

Editor’s notes. — Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter II. Filing.

§ 29-1002.01. Signing of records delivered for filing to Mayor.

A record delivered to the Mayor for filing pursuant to this chapter shall be signed as follows:

(1) The initial articles of organization shall be signed by at least one organizer.

(2) A statement of cancellation under § 29-1003.02(d) shall be signed by at least one organizer.

(3) Except as otherwise provided in paragraph (4) of this subsection, a record signed on behalf of an existing limited cooperative association shall be signed by an officer.

(4) A record filed on behalf of a dissolved association shall be signed by a

person winding up activities under § 29-1012.06 or a person appointed under § 29-1012.06 to wind up those activities.

(5) Any other record delivered on behalf of a person to the Mayor for filing must be signed by that person.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(3)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 deleted the subsection “(a)” designation; substituted “delivered on behalf of a person to the Mayor for filing must be signed by that person” for “shall be signed by the person on whose behalf the record is delivered to the Mayor” in (5); and repealed former (b), which read: “Any record to be signed

under this chapter may be signed by an authorized agent.”

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1002.02. Signing and filing of records pursuant to judicial order.

(a) If a person required by this chapter to sign or deliver a record to the Mayor for filing does not do so, any other person that is aggrieved may petition the Superior Court to order:

- (1) The person to sign the record; or
- (2) The person to deliver the record to the Mayor for filing; or
- (3) The Mayor to file the record unsigned.

(b) If the petitioner under subsection (a) of this section is not the limited cooperative association or foreign cooperative to which the record pertains, the petitioner shall make the association or cooperative a party to the action.

(c) A record filed pursuant to this section is effective without being signed.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(3)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter V. Members.

§ 29-1005.02. Becoming member.

(a) If a limited cooperative association is to have only one cooperative member upon formation, the cooperative becomes a member as agreed by that cooperative and the organizer of the limited cooperative association. That cooperative and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial cooperative member.

(b) If a limited cooperative association is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the limited cooperative association. The organizer acts

on behalf of the persons in forming the limited cooperative association and may be, but need not be, one of the persons.

(c) After formation of a limited cooperative association, a person becomes a member:

- (1) As provided in the organic rules;
- (2) As the result of a transaction effective under subchapter XV of this chapter or Chapter 2 of this title;
- (3) With the consent of all the members; or
- (4) As provided in § 29-1012.02(3).

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(4)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1005.03. No agency power of member as member.

(a) A member is not an agent of a limited cooperative association solely by reason of being a member.

(b) A person's status as a member does not prevent or restrict law other than this chapter from imposing liability on a limited cooperative association because of the person's conduct.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(4)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1005.04. Liability of members and managers.

(a) A debt, obligation, or other liability of a limited cooperative association is solely the debt, obligation, or other liability of the limited cooperative association. A member or manager of the limited cooperative association is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the association solely by reason of being or acting as a member or manager of the association. This subsection applies regardless of the dissolution of the association.

(b) The failure of a limited cooperative association to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on any member or manager of the association for any debt, obligation, or other liability of the association.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(4)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1005.05. Right of member and former member to information.

(a) On reasonable notice a member may inspect and copy, at the principal office or a reasonable location specified by the limited cooperative association, required information listed in § 29-1001.10(a)(1) through (8) during regular business hours. A member need not have any particular purpose for seeking the information. The association shall not be required to provide the same information listed in § 29-1001.10(a)(2) through (8) to the same member more than once during a 6-month period.

(b) On reasonable notice, a member may inspect and copy, at the principal office or a reasonable location specified by the limited cooperative association, required information listed in § 29-1001.10(a)(9), (10), (12), (13), (16), and (18) during regular business hours, if:

(1) The member seeks the information in good faith and for a proper purpose reasonably related to the member's interest;

(2) The demand includes a description with reasonable particularity of the information sought and the purpose for seeking the information;

(3) The information sought is directly connected to the member's purpose; and

(4) The demand is reasonable.

(c) Not later than 10 business days after receipt of a demand pursuant to subsection (b) of this section, a limited cooperative association shall provide, in a record, the following information to the member that made the demand:

(1) If the association agrees to provide the demanded information:

(A) What information the association will provide in response to the demand; and

(B) A reasonable time and place at which the association will provide the information; or

(2) If the association declines to provide some or all of the demanded information, the association's reasons for declining.

(d) Not later than 10 business days after a limited cooperative association receives a demand made in a record, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection (b)(2) of this section. The association shall respond to a demand made pursuant to this subsection in the manner provided in subsection (c) of this section.

(e) Not later than 10 business days after receipt by a limited cooperative association of a demand made by a member in a record, but not more often than once in a 6-month period, the association shall deliver to the member a record

stating the information with respect to the member required by § 29-1001.10(a)(17).

(f) In addition to any restriction or condition stated in its organic rules, a limited cooperative association, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information as confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the association shall have the burden of proving reasonableness.

(g) A limited cooperative association may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(h) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the organic rules or subsection (f) of this section applies both to the agent or legal representative and the member or dissociated member.

(i) The rights stated in this section shall not extend to a person as transferee.

(j) The organic rules may require a limited cooperative association to provide more information than required by this section and may establish conditions and procedures for providing the information.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(4)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section and repealed former subsection (e) which read: “A limited cooperative association shall respond to a demand made pursuant to subsection (d) of this section in the manner provided in subsection (c) of this section.” and repealed former subsection (i) which read: “A person that may obtain information under this section may obtain the information through an

attorney or other agent. A restriction imposed on the person under subsection (g) of this section or by the organic rules shall apply to the attorney or other agent.”

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VI. Member’s Interest in Limited Cooperative Association.

§ 29-1006.05. Charging order.

(a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the financial rights of the judgment debtor for the unsatisfied amount of the judgment. Except as otherwise provided in subsection (b) of this section, a charging order constitutes a lien on the judgment debtor’s financial rights and require the limited cooperative association to pay over to the person to whom the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order under subsection (a) of this section, the court may:

(1) Appoint a receiver of the distributions subject to the charging order with the power to make all inquiries the judgment debtor might have made; and

(2) Make all other orders necessary to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the financial rights. Except as otherwise provided in subsection (f) of this section, the purchaser at the foreclosure sale shall obtain only the financial rights that are subject to the charging order, shall not thereby become a member, and shall be subject to § 29-1006.03.

(d) At any time before a foreclosure under subsection (c) of this section, a member or transferee whose financial rights are subject to a charging order under subsection (a) of this subsection may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) At any time before foreclosure under subsection (c) of this section, the limited cooperative association or one or more members whose financial rights are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) If a court forecloses a charging order lien against the sole member of a limited cooperative association:

(1) The court shall confirm the sale;

(2) The purchaser at the sale obtains the member's entire interest, not only the member's financial rights;

(3) The purchaser thereby becomes a member; and

(4) The person whose interest was subject to the foreclosed charging order is dissociated as a member.

(g) This chapter shall not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's financial rights.

(h) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee, in the capacity of judgment creditor, may satisfy the judgment from the member's or transferee's financial rights.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(5), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

*Subchapter X. Contributions, Allocations, and Distributions.***§ 29-1010.07. Limitations on distributions.**

(a) A limited cooperative association shall not make a distribution, including a distribution under § 29-1012.07 if, after the distribution:

(1) The association would not be able to pay its debts as they become due in the ordinary course of the association's activities and affairs; or

(2) The association's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the association were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members whose preferential rights are superior to those of persons receiving the distribution.

(b) A limited cooperative association may base a determination that a distribution is not prohibited under subsection (a) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(c) Except as otherwise provided in subsection (d) of this section, the effect of a distribution allowed under subsection (b) of this section shall be measured:

(1) In the case of distribution by purchase, redemption, or other acquisition of financial rights in the limited cooperative association, as of the earlier of the date money or other property is transferred or debt is incurred by the association or the date the person entitled to the distribution ceases to own the financial rights being acquired by the association in return for the distribution;

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed;

(3) In all other cases, as of the date:

(A) The distribution is authorized, if the payment occurs not later than 120 days after that date; or

(B) The payment is made, if payment occurs more than 120 days after the distribution is authorized.

(d) A limited cooperative association's indebtedness incurred by reason of a distribution made in accordance with this section is at parity with the association's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(e) A limited cooperative association's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of subsection (a) of this section if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness shall be treated as a distribution, the effect of which is measured on the date the payment is made.

(f) In measuring the effect of a distribution under § 29-1012.07, the liabilities of a dissolved limited cooperative association do not include any claim that has been disposed of under §§ 29-1012.08, 29-1012.09, and 29-1012.10.

(g) For purposes of this section, the term "distribution" shall not include reasonable amounts paid to a member in the ordinary course of business as

payment or compensation for commodities, goods, past or present services, or reasonable payments made in the ordinary course of business under a bona fide retirement or other benefits program.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(6)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1010.08. Liability for improper distributions; limitation of action.

(a) Except as otherwise provided in subsection (b) of this section, if a director of a limited cooperative association consents to a distribution made in violation of § 29-1010.07 and in consenting to the distribution fails to comply with § 29-1008.18, the director is personally liable to the association for the amount of the distribution that exceeds the amount which could have been distributed without violating § 29-1010.07.

(b) A person that receives a distribution knowing that the distribution was made in violation of § 29-1010.07 shall be personally liable to the limited cooperative association to the extent the distribution exceeded the amount that could have been properly paid.

(c) A director against whom an action is commenced under subsection (a) of this section may implead in the action any:

(1) Other person who is liable under subsection (a) of this section and seek to enforce a right of contribution from the person; and

(2) Person that receives a distribution in violation of subsection (b) of this section and may seek to enforce a right of contribution from the person in the amount the person received in violation [of] subsection (b) of this section.

(d) An action under this section shall be barred if it is commenced later than 2 years after the distribution.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(6)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote (a); substituted “person that receives” for “member or transferee of financial rights which received” in (b); and rewrote (c).

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter XI. Dissociation.

§ 29-1011.01. Member's dissociation.

(a) A person has the power to dissociate as a member at any time.

(b) A member's dissociation from a limited cooperative association shall be wrongful only if the dissociation:

- (1) Breaches an express provision of the organic rules; or
- (2) Occurs before the termination of the limited cooperative association

and:

(A) The person is expelled as a member under subsection (d)(3) or (4) of this subsection; or

(B) In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a member because it dissolved or terminated in bad faith.

(c) Unless the organic rules otherwise provide, a person that wrongfully dissociates as a member shall be liable to the limited cooperative association and to the other members for damages caused by the dissociation. The liability shall be in addition to any other debt, obligation, or liability of the person to the association.

(d) A member shall be dissociated from the limited cooperative association as a member when:

(1) The association receives notice in a record of the member's express will to dissociate as a member or, if the member specifies in the notice an effective date later than the date the association received notice, on that later date;

(2) An event stated in the organic rules as causing the member's dissociation as a member occurs;

(3) The member is expelled as a member under the organic rules;

(4) The member is expelled as a member by the board of directors because:

(A) It is unlawful to carry on the association's activities and affairs with the member as a member;

(B) There has been a transfer of all the member's financial rights in the association, other than:

(i) A creation or perfection of a security interest; or

(ii) A charging order in effect under § 29-1006.05 which has not been foreclosed;

(C) The member is a limited liability company, association, or partnership which has been dissolved and its business is being wound up; or

(D) The member is a corporation or cooperative and:

(i) The member filed a certificate of dissolution, or the equivalent, or the jurisdiction of formation revoked the association's charter or right to conduct business;

(ii) The association sends a notice to the member that it will be expelled as a member for a reason described in sub-subparagraph (i) of this subparagraph; and

(iii) Not later than 90 days after the notice was sent under sub-subparagraph (ii), the member did not revoke its certificate of dissolution, or the equivalent, or the jurisdiction of formation did not reinstate the association's charter or right to conduct business;

(E) The member is an individual and is adjudged incompetent;

(5) In the case of a member who is an individual, the individual dies;

(6) In the case of a member that is a trust or is acting as a member by

virtue of being a trustee of a trust, all the trust's financial rights in the association are distributed;

(7) In the case of a member that is an estate, the estate's entire financial interest in the association is distributed;

(8) In the case of a member that is not an individual, partnership, limited liability company, cooperative, corporation, trust, or estate, the member is terminated;

(9) The association participates in a merger if, under the plan of merger as approved under subchapter XV of this chapter, the member ceases to be a member; or

(10) The association participates in a transaction under Subchapter [subchapter] XV of this chapter or Chapter 2 of this title if, under the terms of the transaction, the association ceases to exist in the form of a limited cooperative association or the member ceases to be a member.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(7)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “has the power to dissociate as a member at any time” for “shall have the power to dissociate as a member at any time, rightfully or wrongfully, by express will” in (a); substituted “A” for “Unless the organic rules otherwise provide, a” at the beginning of (b); substituted “limited cooperative association and to the other members” for “limited cooperative association” in (c); sub-

stituted “activities and affairs” for “activities” in (d)(4)(A); and substituted “Subchapter XV of this chapter or Chapter 2” for “Chapter 2” in (d)(10).

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1011.02. Effect of dissociation as member.

(a) Upon a member's dissociation:

(1) The person's right to participate as a member in the management and conduct of the association's activities and affairs terminates; and

(2) Subject to § 29-1011.03, subchapter XV of this chapter, and Chapter 2 of this title, any financial rights owned by the person in the person's capacity as a member are owned by the person as a transferee.

(b) A person's dissociation as a member shall not of itself discharge the person from any debt, obligation, or other liability to the limited cooperative association or to the members which the person incurred while a member.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(7)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1011.03. Power of legal representative of member.

Unless the organic rules provide for greater rights, if a member is dissoci-

ated because of death, dies or is expelled by reason of being adjudged incompetent, the member's personal representative or other legal representative may exercise the rights of a transferee of the member's financial rights and, for purposes of settling the estate of a deceased member, may exercise the informational rights of a current member to obtain information under § 29-1005.05.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(7)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “legal representative” for “estate” in the section heading.

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter XII. Dissolution.

§ 29-1012.06. Winding up.

(a) A dissolved limited cooperative association shall wind up its activities and affairs, and except as provided in § 29-1012.07, continue after dissolution only for the purpose of winding up.

(b) In winding up a limited cooperative association's activities, the board of directors:

(1) Shall discharge its liabilities, settle and close its activities, and marshal and distribute its assets; and

(2) May:

(A) Preserve the association or its property as a going concern for no more than a reasonable time;

(B) Prosecute and defend actions and proceedings;

(C) Settle disputes by mediation or arbitration;

(D) Deliver to the Mayor for filing a statement of termination stating the name of the company and that the company is terminated;

(E) Transfer the association's property; and

(F) Perform other acts necessary or appropriate to the winding up.

(c) After dissolution and upon application of a limited cooperative association, a member, or a holder of financial rights, the Superior Court may order judicial supervision of the winding up of the association, including the appointment of a person to wind up the association's activities, if:

(1) After a reasonable time, the association has not wound up its activities; or

(2) The applicant establishes other good cause.

(d) If a person is appointed pursuant to subsection (c) of this section to wind up the activities of a limited cooperative association, the association shall promptly deliver to the Mayor for filing an amendment to the articles of organization to reflect the appointment.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(8)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1012.07. Distribution of assets in winding up limited cooperative association.

(a) In winding up a limited cooperative association's activities and affairs, the association shall apply its assets to discharge its obligations to creditors, including members that are creditors. The association shall apply any remaining assets to pay, in money, the net amount distributable to members in accordance with their right to distributions under subsection (b) of this section.

(b)(1) Unless the organic rules otherwise provide, for the purposes of this subsection, the term "financial interests" means the amounts recorded in the names of members in the records of a limited cooperative association at the time a distribution is made, including amounts paid to become a member, amounts allocated but not distributed to members, and amounts of distributions authorized but not yet paid to members.

(2) Unless the organic rules otherwise provide, each member shall be entitled to a distribution from the association of any remaining assets in the proportion of the member's financial interests to the total financial interests of the members after all other obligations are satisfied.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(8)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "activities and affairs" for "business" in (a).

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1012.08. Known claims against dissolved limited cooperative association.

(a) Subject to subsection (d) of this section, a dissolved limited cooperative association may give notice of a known claim under subsection (b) of this section, which has the effect provided in subsection (c) of this section.

(b) A dissolved limited cooperative association may notify its known claimants of the dissolution in a record. The notice shall:

- (1) Specify that a claim be in a record;
- (2) Specify the information required to be included in the claim;
- (3) Provide an address to which the claim must be sent;
- (4) State the deadline for receipt of the claim, which shall not be less than 120 days after the date the notice is received by the claimant; and
- (5) State that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved limited cooperative association shall be barred if the requirements of subsection (b) of this section are met and:

(1) The association is not notified of the claimant's claim, in a record, by the deadline specified in the notice under subsection (b)(4) of this section;

(2) In the case of a claim that is timely received but rejected by the association, the claimant does not commence an action to enforce the claim against the association within 90 days after receipt of the notice of the rejection; or

(3) If a claim is timely received but is not accepted or rejected by the association within 120 days after the deadline for receipt of claims, the claimant does not commence an action to enforce the claim against the association within 90 days after the 120-day period.

(d) This section shall not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(8)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “give notice of a known claim under subsection (b) of this section, which has the effect provided in subsection (c) of this section” for “dispose of the known claims against it by following the procedure in subsections (b) and (c) of this section” in (a); and substituted “effective date” for the first occurrence of “date” in (d).

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1012.09. Other claims against dissolved limited cooperative association.

(a) A dissolved limited cooperative association may publish notice of its dissolution and request persons having claims against the association to present them in accordance with the notice.

(b) A notice under subsection (a) of this section shall:

(1) Be published at least once in a newspaper of general circulation in the District or, if the association does not have a principal office in the District, in the state and county in which the association's principal office is or was last located;

(2) Describe the information required to be contained in a claim and provide an address to which the claim is to be sent; and

(3) State that a claim against the association is barred unless an action to enforce the claim is commenced not later than 3 years after publication of the notice.

(c) If a dissolved limited cooperative association publishes a notice in accordance with subsection (b) of this section, the claim of each of the following claimants shall be barred unless the claimant commences an action to enforce the claim not later than 3 years after the first publication date of the notice:

(1) A claimant that did not receive, notice in a record under § 29-1012.08;

(2) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution; and

(3) A claimant whose claim was timely sent to the company but not acted on.

(d) A claim not barred under this section or § 29-1012.08 may be enforced:

(1) Against a dissolved limited cooperative association, to the extent of its undistributed assets; or

(2) If, except as otherwise provided in § 29-1012.10, the assets of the association have been distributed after dissolution against a member or holder of financial rights to the extent of that person's proportionate share of the claim or the assets distributed to the person after dissolution, whichever is less; however, a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the person after dissolution.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(8)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote (c) and (d).

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1012.10. Court proceedings.

(a) Upon application by a dissolved limited cooperative association that has published a notice under § 29-1012.09, the Superior Court may determine the amount and form of security to be provided for payment of claims against the association that are contingent, have not been made known to the association, or are based on an event occurring after the effective date of dissolution, but that, based on the facts known to the association, are reasonably anticipated to arise after the effective date of dissolution. The court need not require security for any claim that is barred under § 29-1012.08 or § 29-1012.09 or that is reasonably anticipated to be barred under that section.

(b) Not later than 10 days after filing an application under subsection (a) of this section, a dissolved limited cooperative association shall give notice of the proceeding to each known claimant holding a contingent claim as shown on the records of the dissolved association.

(c) The Superior Court may appoint a representative in a proceeding brought under this section to represent all claimants whose identities are unknown. The dissolved limited cooperative association shall pay reasonable fees and expenses of the representative, including all reasonable attorneys' and expert witness fees.

(d) Provision by the dissolved limited cooperative association for security in the amount and the form ordered by the Superior Court shall satisfy the association's obligations with respect to claims that are contingent, have not been made known to the association, or are based on an event occurring after the effective date of dissolution. The association's obligations with respect to claims that are contingent may not be enforced against a member or holder of financial rights that received assets in liquidation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(8)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Court proceedings” for “Judicial proceeding” in the section heading; added the second sentence of (a); added “as shown on the records of the dissolved association” at the end of (b); and substituted a closing period and “The association’s obligations with respect to claims that are contingent may not be enforced against a member or holder of financial rights that re-

ceived assets in liquidation” for “and the claims shall not be enforced against a member that received a distribution” in (d).

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1012.13. Rescinding dissolution.

(a) A limited cooperative association may rescind its dissolution, unless a statement of termination applicable to the association is effective, the Superior Court has entered an order under § 29-1012.03 dissolving the association, or the Mayor has dissolved the association under § 29-106.02.

(b) Rescinding dissolution under this section requires:

(1) The consent of each member;

(2) If a statement of dissolution applicable to the limited cooperative association has been filed by the Mayor but has not become effective, the delivery to the Mayor for filing of a statement of withdrawal applicable to the statement of dissolution; and

(3) If a statement of dissolution applicable to the limited cooperative association is effective, the delivery to the Mayor for filing of a statement of correction under § 29-102.05 stating that dissolution has been rescinded under this section.

(c) If a limited cooperative association rescinds its dissolution:

(1) The association resumes carrying on its activities and affairs as if dissolution had never occurred;

(2) Subject to paragraph (3) of this subsection, any liability incurred by the association after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and

(3) The rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

(Mar. 5, 2013, D.C. Law 19-210, § 2(j)(8)(F), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-1001.02.

210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor’s notes. — Application of Law 19-

Subchapter XIII. Action by Member.

§ 29-1013.01. Derivative action.

A member may maintain a derivative action in the Superior Court to enforce a right of a limited cooperative association if:

(1) The member demands that the association bring an action to enforce the right; and

(2) Any of the following occur:

- (A) The association does not, within 90 days after the member makes the demand, agree to bring the action;
 - (B) The association notifies the member that it has rejected the demand;
 - (C) Irreparable harm to the association would result by waiting 90 days after the member makes the demand;
 - (D) The association agrees to bring an action demanded and fails to bring the action within a reasonable time; or
 - (E) A demand under paragraph (1) of this subsection would be futile.
- (July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(9)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added (2)(E) and made related changes.

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor’s notes.
Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1013.03. Pleading.

- In a derivative action to enforce a right of a limited cooperative association, the complaint shall state:
- (1) The date and content of the plaintiff’s demand under § 29-1013.01(1) and the association’s response;
 - (2) If 90 days have not expired since the demand, how irreparable harm to the association would result by waiting for the expiration of 90 days;
 - (3) If the association agreed to bring an action demanded, that the action has not been brought within a reasonable time; and
 - (4) If the demand should be excused as futile, the reasons therefor.
- (July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(j)(9)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added (4) and made related changes.

Legislative history of Law 19-210. — See note to § 29-1001.02.

Editor’s notes.
Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1013.06. Special litigation committee.

(a) If a limited cooperative association is named as or made a party in a derivative proceeding, the association may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the association appoints a special litigation committee, on motion by the committee made in the name of the association, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to complete its investigation. This subsection does not prevent the court from enforcing a person’s right to information under § 29-1005.05 or, for good cause

shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee may be composed of one or more disinterested and independent individuals, who may be members.

(c) A special litigation committee may be appointed:

(1) By a majority of the directors not named as defendants or plaintiffs in the proceeding; and

(2) If all directors are named as defendants or plaintiffs in the proceeding, by a majority of the directors named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited cooperative association that the proceeding:

(1) Continue under the control of the plaintiff;

(2) Continue under the control of the committee;

(3) Be settled on terms approved by the committee; or

(4) Be dismissed.

(e) After making a determination under subsection (d) of this section, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) of this section and allow the action to proceed under the direction of the plaintiff.

(Mar. 5, 2013, D.C. Law 19-210, § 2(j)(9)(C), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

CHAPTER 11. UNINCORPORATED NONPROFIT ASSOCIATIONS.

Sec. 29-1106. Ownership and transfer of property.	Sec. 29-1120. Notice and quorum requirements for meetings of managers.
29-1107. Statement of authority as to real property.	29-1126. Mergers.
29-1113. Meeting of members; voting and notice.	

§ 29-1106. Ownership and transfer of property.

(a) An unincorporated nonprofit association may acquire, hold, encumber, or transfer in its name an interest in property.

(b) An unincorporated nonprofit association may be a beneficiary of a trust or contract, a legatee, or a devisee.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(k)(2), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 deleted “real or personal” preceding “property” in (a).

Legislative history of Law 19-210. — Law 19-210, the “District of Columbia Official Code Title 29 Technical and Harmonizing Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-532. The Bill was adopted on first and second readings on July

10, 2012, and Oct. 2, 2012, respectively. Signed by the Mayor on Oct. 31, 2012, it was assigned Act No. 19-512 and transmitted to Congress for its review. D.C. Law 19-210 became effective on Mar. 5, 2013.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1107. Statement of authority as to real property.

(a) For the purposes of this section, the term “statement of authority” means a statement authorizing a person to transfer an interest in real property held in the name of an unincorporated nonprofit association.

(b) An interest in real property held in the name of an unincorporated nonprofit association may be transferred by a person authorized to do so in a statement of authority filed by the association with the Mayor.

(c) A statement of authority shall set forth:

(1) The name of the unincorporated nonprofit association;

(2) The address in the District, including the street address, if any, of the association, or, if the association does not have an address in the District, its out-of-state address;

(3) That the association is an unincorporated nonprofit association; and

(4) The name, title, or position of a person authorized to transfer an interest in real property held in the name of the association.

(d) A statement of authority shall be executed in the same manner as a deed by a person other than the person authorized in the statement to transfer the interest.

(e) A document effecting an amendment, revocation, or cancellation of a statement of authority, or stating that the statement is unauthorized or erroneous, shall meet the requirements for execution and filing of an original statement.

(f) Unless canceled earlier, a filed statement of authority and its most recent amendment shall expire 5 years after the date of the most recent filing.

(g) If the record title to real property is in the name of an unincorporated nonprofit association and the statement of authority is delivered to the Mayor for filing, the authority of the person named in the statement to transfer shall be conclusive in favor of a person that gives value without notice that the person lacks authority.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(k)(3), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “delivered to the Mayor for filing” for “filed with the Mayor” in (g).

Legislative history of Law 19-210. — See note to § 29-1106.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1113. Procedural requirements for member meetings.

(a) Unless an unincorporated nonprofit association’s governing principles provide otherwise:

(1) Approval of a matter by the members shall require an affirmative majority of the votes cast at a meeting of members; and

(2) Each member shall be entitled to one vote on each matter that is submitted for approval by members.

(b) The governing principles may provide for the:

(1) Calling, location, and timing of member meetings;

(2) Notice and quorum requirements for member meetings;

(3) Conduct of member meetings;

(4) Taking of action by the members by consent without a meeting or casting ballots; and

(5) Participation by members in a member meeting by telephone or other means of electronic communication.

(c) If the governing principles do not provide for a matter described in subsection (b) of this section, customary usages and principles of parliamentary law and procedure apply.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(k)(4), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Procedural requirements for member meetings” for “Member Meeting, voting and notice requirements” in the section heading; substituted “the members” for “members” in (a)(1); rewrote (b); and added (c).

Legislative history of Law 19-210. — See note to § 29-1106.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1120. Procedural requirements for manager meetings.

(1) Calling, location, and timing of manager meetings;

(2) Notice and quorum requirements for manager meetings;

(3) Conduct of manager meetings;

(4) Taking of action by the managers by consent without a meeting; and

(5) Participation by managers in a manager meeting by telephone or other means of electronic communication.

(b) If the governing principles do not provide for a matter described in subsection (a) of this section, customary usages and principles of parliamentary law and procedure apply.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(k)(5), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-1106.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1126. Mergers.

(a) For the purposes of this section, the term:

(1) “Constituent association organization” means an unincorporated non-profit association that is merged with one or more other unincorporated nonprofit associations, including the surviving association.

(2) “Disappearing association” means a constituent association that is not the surviving association.

(3) “Surviving association” means an unincorporated nonprofit association into which one or more other associations are merged.

(b) A merger involving unincorporated nonprofit associations shall be subject to the following requirements:

(1) Each of the constituent merging associations shall comply with its governing law.

(2) Each party to the merger shall approve a plan of merger. The plan, which must be in a record, shall include the following provisions:

(A) The name and form of each association that is a party to the merger;

(B) The name and form of the surviving association and, if the surviving association is to be created by the merger, a statement to that effect;

(C) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent association into any combination of money, interests in the surviving association, and other consideration;

(D) If the surviving association is to be created by the merger, the surviving association’s organizational documents that are proposed to be in a record; and

(E) If the surviving association is not to be created by the merger, any amendments to be made by the merger to the surviving association’s organizational documents that are, or are proposed to be, in a record.

(3) The plan of merger shall be approved by the members of each unincorporated nonprofit association that is a constituent association in the merger. If a member of an association that is a party to a merger will have personal liability with respect to an obligation of a constituent or a surviving association, the consent in a record of that member to the plan of merger shall also be obtained.

(4) Subject to the contractual rights of third parties, after a plan of merger is approved and at any time before the merger is effective, a constituent association may amend the plan or abandon the merger as provided in the plan, or except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

(5) Following approval of the plan, a merger under this section shall be effective, if a constituent association is required to give notice to or obtain the approval of a governmental agency or officer to be a party to a merger, when the notice has been given and the approval has been obtained.

(d) When a merger becomes effective, the following occur

(1) The surviving association shall continue or come into existence.

(2) Each constituent association that merges into the surviving association shall cease to exist as a separate entity.

(3) All property owned by each constituent association that ceases to exist shall vest in the surviving association.

(4) All debts, obligations, or other liabilities of each constituent association that ceases to exist shall continue as debts, obligations, or other liabilities of the surviving association.

(5) An action or proceeding pending by or against any constituent association that ceases to exist may be continued as if the merger had not occurred.

(6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent association that ceases to exist shall vest in the surviving association.

(7) Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger shall take effect.

(8) The merger shall not affect the personal liability, if any, of a member or manager of a constituent association for a debt, obligation, or other liability of the association incurred before the merger is effective.

(9) A surviving association that is a foreign unincorporated nonprofit association consents to the jurisdiction of the Superior Court to enforce any debt, obligation, or other liability owed by a constituent association if, before the merger, the constituent association was subject to suit in the District on the debt, obligation, or other liability. A surviving association that is a foreign unincorporated nonprofit association and not authorized to do business in the District may be served with process as provided in § 29-104.12 for the purposes of enforcing a debt, obligation, or other liability under this subsection.

(e) Property held for a charitable purpose under the law of the District by a domestic or foreign unincorporated nonprofit association immediately before a merger under this section becomes effective shall not, as a result of the merger, be diverted from the objects for which it was donated, granted, or devised, unless, to the extent required by or pursuant to the law of the District concerning cy pres or other law dealing with nondiversion of charitable assets, the organization obtains an appropriate order of the Superior Court specifying the disposition of the property.

(f) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a disappearing association and that takes effect or remains payable after the merger shall inure to the benefit of the surviving association. A trust obligation that would govern property if transferred to the disappearing association shall apply to property that is instead transferred to the surviving association under this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(k)(6), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “unincorporated nonprofit associations” for “an unincorporated nonprofit association” in (b).

Legislative history of Law 19-210. — See note to § 29-1106.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

CHAPTER 12. STATUTORY TRUSTS.

Subchapter I. General Provisions

Sec.

- 29-1201.02. Definitions.
- 29-1201.03. Governing instrument.
- 29-1201.04. Mandatory rules.
- 29-1201.07. Constructive notice.

Subchapter II. Formation; Certificate of Trust and Other Filings; Process

- 29-1202.01. Certificate of trust.
- 29-1202.02. Amendment or restatement of certificate of trust.
- 29-1202.04. Signing and filing pursuant to judicial order.
- 29-1202.05. Liability for inaccurate information in filed record.

Subchapter III. Governing Law; Authorization; Duration; Powers

- 29-1203.01. Governing law.
- 29-1203.02. Statutory trust as entity.
- 29-1203.03. Permissible purposes.
- 29-1203.04. Limitation on liability of trustees and beneficial owners.
- 29-1203.06. Duration.

Subchapter IV. Series Trusts

- 29-1204.01. Statutory trust having series.
- 29-1204.02. Liability of series trust.
- 29-1204.05. Claims pertaining to a series.

Subchapter V. Trustees and Trust Management

Sec.

- 29-1205.01. Management of statutory trust.
- 29-1205.02. Trustee powers.
- 29-1205.06. Reasonable reliance.
- 29-1205.07. Interested transactions.
- 29-1205.09. Reimbursement, indemnification, advancement, and exoneration.

Subchapter VI. Beneficial Owners

- 29-1206.01. Beneficial interest.
- 29-1206.03. Contribution by beneficial owner.
- 29-1206.04. Distribution to beneficial owner.
- 29-1206.06. Transfer of beneficial interest.
- 29-1206.09. Direct action by beneficial owner.
- 29-1206.10. Derivative action by beneficial owner.
- 29-1206.11. Proper plaintiff.
- 29-1206.12. Pleading.
- 29-1206.13. Proceeds and expenses.
- 29-1206.14. Special litigation committee.
- 29-1206.15. Limitations on distributions.
- 29-1206.16. Liability for improper distributions.

Subchapter VIII. Dissolution and Winding Up

- 29-1208.01. Events causing dissolution.
- 29-1208.03. Winding up.
- 29-1208.04. Known claims against dissolved statutory trust.
- 29-1208.05. Other claims against dissolved statutory trust.
- 29-1208.06. Court proceedings.

Subchapter I. General Provisions.

§ 29-1201.02. Definitions.

For the purposes of the chapter, the term:

(1) “Beneficial owner” means the owner of a beneficial interest in a statutory trust or foreign statutory trust.

(2) “Certificate of trust” means the record required by § 29-1202.01. The term “certificate of trust” includes the certificate amended or restated.

(3) “Common-law trust” means a fiduciary relationship with respect to property arising from a manifestation of intent to create that relationship and subjecting the person that holds title to the property to duties to deal with the property for the benefit of charity or for one or more persons, at least one of which is not the sole trustee, whether the purpose of the trust is donative or commercial. The term “common-law trust” shall include the type of trust known at common law as a “business trust”, “Massachusetts trust”, or “Massachusetts business trust”.

(4) “Contribution”, except in the phrase “right of contribution”, means property or a benefit described in § 29-1206.03 that a person provides to a statutory trust in order to become a beneficial owner or provides in the person’s capacity as a beneficial owner.

(5) “Distribution” means a transfer of money or other property from a statutory trust as a result of a beneficial interest. The term includes transfers occurring when a statutory trust’s redeems or otherwise purchases a beneficial interest.

(6) “Foreign statutory trust” means a trust that is formed under the laws of a jurisdiction other than the District which would be a statutory trust if formed under the laws of the District.

(7) “Governing instrument” means the trust instrument and certificate of trust.

(8) “Person” means an individual, corporation, statutory trust, estate, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. The term “person” shall not include a common-law trust.

(9) “Registered foreign statutory trust” means a foreign statutory trust that is registered to do business in the District pursuant to a registration statement delivered to the Mayor for filing.

(10) “Related party”, with respect to a person that is a trustee, officer, employee, manager, or beneficial owner, means:

(A) The spouse of the party;

(B) A child, parent, sibling, grandchild, or grandparent of the party, or the spouse of one of them;

(C) An individual having the same residence as the party;

(D) A trust or estate of which a related party described in subparagraph (A), (B), or (C) of this paragraph is a substantial beneficiary;

(E) A trust, estate, legally incapacitated individual, conservatee, or minor for which the party is a fiduciary; or

(F) A person that directly or indirectly controls, is controlled by, or is under common control with, the party.

(11) “Series trust” means a statutory trust that has one or more series created under § 29-1204.01.

(12) “Statutory trust” means an entity formed under this chapter or an entity that becomes subject to this chapter under Chapter 2 of this title.

(13) “Trust” includes a common-law trust, statutory trust, and foreign statutory trust.

(14) “Trust instrument” means a record other than the certificate of trust which provides for the governance of the activities and affairs of a statutory trust and the conduct of its business. The term “trust instrument” includes a trust agreement, a declaration of trust, and bylaws.

(15) “Trustee” means a person designated, appointed, or elected as a trustee of a statutory trust or foreign statutory trust in accordance with the governing instrument or applicable law.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(2)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — Law 19-210, the “District of Columbia Official Code Title 29 Technical and Harmonizing Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-532. The Bill was adopted on first and second readings on July

10, 2012, and Oct. 2, 2012, respectively. Signed by the Mayor on Oct. 31, 2012, it was assigned Act No. 19-512 and transmitted to Congress for its review. D.C. Law 19-210 became effective on Mar. 5, 2013.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1201.03. Governing instrument: scope, limitations, and amendment.

(a) Except as otherwise provided in § 29-1201.04, the governing instrument shall govern the:

(1) Management, affairs, and conduct of the business of a statutory trust; and

(2) Rights, interests, duties, obligations, and powers of, and the relations among, the trustees, a person designated under subsection (e)(8) or (9) of this section, the beneficial owners, and the statutory trust.

(b) To the extent the governing instrument does not otherwise provide for a matter described in subsection (a) of this section, this chapter shall govern the matter.

(c) The governing instrument may include one or more instruments, agreements, declarations, bylaws, or other records and refer to or incorporate any record.

(d) The governing instrument may be amended with the approval of all the beneficial owners.

(e) Subject to § 29-1201.04, without limiting the terms that may be included in a governing instrument, the governing instrument may:

(1) Provide the means by which beneficial ownership is determined and evidenced;

(2) Limit a beneficial owner’s right to transfer its beneficial interest;

(3) Provide for one or more series under subchapter IV of this chapter;

(4) To the extent that voting rights are granted under the governing instrument, include terms relating to:

(A) Notice of the date, time, place, or purpose of any meeting at which any matter is to be voted on;

(B) Waiver of notice;

(C) Action by consent without a meeting;

(D) Establishment of record dates;

(E) Quorum requirements;

(F) Voting:

(i) In person;

(ii) By proxy;

(iii) By any form of communication that creates a record, telephone, or video conference; or

(iv) In any other manner; or

(G) Any other matter with respect to the exercise of the right to vote;

(5) Subject to § 29-1204.03, provide for the creation of one or more classes of trustees, beneficial owners, or beneficial interests having separate rights, powers, or duties;

(6) Subject to § 29-1204.03, provide for any action to be taken without the vote or approval of any particular trustee or beneficial owner, or classes of trustees, beneficial owners, or beneficial interests, including:

(A) Amendment of the governing instrument;

(B) Merger, conversion, interest exchange, or domestication;

(C) Appointment of trustees;

(D) Sale, lease, exchange, transfer, pledge, or other disposition of all or any part of the property of the statutory trust or the property of any series thereof; and

(E) Dissolution of the statutory trust;

(7) Provide for the creation of a statutory trust, including the creation of a statutory trust to which all or any part of the property, liabilities, profits, or losses of a statutory trust may be transferred or exchanged, and for the conversion of beneficial interests in a statutory trust, or series thereof, into beneficial interests in the new statutory trust or series thereof;

(8) Provide for the appointment, election, or engagement of agents or independent contractors of the statutory trust or delegates of the trustees, or agents, officers, employees, managers, committees, or other persons that may manage the activities and affairs of the statutory trust, designate their titles, and specify their rights, powers, and duties;

(9) Provide rights to any person, including a person that is not a party to the governing instrument;

(10) Subject to paragraph (11) of this subsection, specify the manner in which the governing instrument may be amended, including, unless waived by all persons for whose benefit the condition or requirement was intended, a:

(A) Condition that a person that is not a party to the instrument shall approve the amendment for it to be effective; and

(B) Requirement that the governing instrument may be amended only as provided in the governing instrument or as otherwise permitted by law.

(11) Provide that a person may comply with paragraph (10) of this subsection by a representative authorized by the person orally, in a record, or by conduct;

(12) Provide that a person becomes a beneficial owner, acquires a beneficial interest, and is bound by the governing instrument if the person complies

with the conditions for becoming a beneficial owner set forth in the governing instrument, such as payment to the statutory trust or to a previous beneficial owner;

(13) Provide that the statutory trust or the trustees, acting for the statutory trust, hold beneficial ownership of any income earned on securities held by the statutory trust that are issued by any business entity formed, organized, or existing under the laws of any jurisdiction;

(14) Provide for the establishment of record dates;

(15) Grant to, or withhold from, a trustee or beneficial owner, or class of trustees or beneficial owners, the right to vote, separately or with any or all other trustees or beneficial owners, or class of trustees or beneficial owners, on any matter; and

(16) Limit the duration of the statutory trust.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(2)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 deleted “subsection (b) of this section or” following “provided in” in (a); substituted “a person designated under subsection (e)(8) or (9) of this section, the beneficial owners, and the statutory trust” for “the beneficial owners, the statutory trust, and other persons” in (a)(2); substituted “Subject to § 29-1204.03, provide” for “Provide” in (e)(5) and (e)(6); substituted “interest exchange, or domestication” for “or reorganization” in (e)(6)(B); and substituted “activities” for “business” in (e)(8).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor’s notes.

Section 2(l)(2)(B)(ii)(II)(bb) of D.C. Law 19-210 purported to amend subsection (e)(6)(A) of this section, but by its context clearly intended to amend (e)(6)(B). The amendment has been implemented in § 29-1201.03(e)(6)(B).

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1201.04. Mandatory rules.

The governing instrument shall not:

(1) Vary any requirement, procedure, or other provision of this title pertaining to:

(A) Registered agents; or

(B) The Mayor, including provisions pertaining to records authorized or required to be delivered to the Mayor for filing under this title;

(2) Vary the governing law under § 29-1203.01;

(3) Negate the exclusion of a predominantly donative purpose under § 29-1203.03;

(4) Vary the provisions pertaining to series trusts in §§ 29-1204.01, 29-1204.02(b) or (c), 29-1204.03, and 29-1204.04(c);

(5) Vary the standards of conduct for trustees under § 29-1205.05, but the governing instrument may prescribe the standards by which good faith, best interests of the statutory trust, and care that a person in a similar position would reasonably believe appropriate under similar circumstances are determined, if the standards are not manifestly unreasonable;

(6) Vary the liability under § 29-1205.06 of a trustee or other person; but the governing instrument may prescribe the standards for assessing whether the reliance was reasonable, if the standards are not manifestly unreasonable;

(7) Restrict the right of a trustee to information under § 29-1205.08, but the governing instrument may prescribe the standards for assessing whether information is reasonably related to the trustee's discharge of the trustee's duties as trustee, if the standards are not manifestly unreasonable;

(8) Vary the prohibition under § 29-1205.09 of indemnification, advancement of expenses, or exoneration for conduct involving bad faith, willful misconduct, or reckless indifference;

(9) Vary the obligation of a trustee under § 29-1205.10(c) not to follow a direction that is manifestly contrary to the terms of the governing instrument or would constitute a serious breach of fiduciary duty by the trustee;

(10) Vary the provisions pertaining to the transfer of a beneficial interest and the power of the Superior Court under § 29-1206.06(b) through (d);

(11) Restrict the right of a beneficial owner to information under § 29-1206.08, but the governing instrument may prescribe the standards for assessing whether information is reasonably related to the beneficial owner's interest, if the standards are not manifestly unreasonable;

(12) Restrict the right of a beneficial owner to bring an action under § 29-1206.09 or 29-1206.10, but the governing instrument may subject the right to additional standards and restrictions, including a requirement that beneficial owners owning a specified amount or type of beneficial interest, including in a series trust an interest in the series, join in bringing the action, if the additional standards and restrictions are not manifestly unreasonable;

(13) Vary the right of a beneficial owner under Chapter 2 of this title to approve a merger, interest exchange, conversion, or domestication;

(14) Vary the provisions of Subchapter [subchapter] VIII of this chapter;

(15) Vary the provisions relating to foreign statutory trusts in subchapter V of Chapter 1 of this title;

(16) Vary the miscellaneous provisions in subchapter VII of Chapter 1 of this title;

(17) Vary the rules under § 29-1206.14, if a statutory trust appoints a special litigation committee;

(18) Vary the provision pertaining to the duration of a statutory trust under § 29-1203.06(a);

(19) Vary the capacity of a statutory trust under § 29-1203.08 to sue and be sued in its own name; or

(20) Restrict the rights under this chapter of a person other than a trustee, person designated under § 29-1201.03(e)(8) and (9), or beneficial owner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(2)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1201.07. **Constructive notice.**

A person that is not a beneficial owner is deemed to have notice of a statutory trust's merger, interest exchange, conversion, or domestication 90 days after articles of merger, interest exchange, conversion, or domestication under subchapter VII of this chapter or Chapter 2 of this title become effective.

(Mar. 5, 2013, D.C. Law 19-210, § 2(l)(2)(D), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

Subchapter II. Formation; Certificate of Trust and Other Filings; Process.

§ 29-1202.01. **Certificate of trust.**

(a) To form a statutory trust, a person shall deliver a certificate of trust to the Mayor for filing.

(b) A certificate of trust shall state:

(1) The name of the statutory trust, which must comply with §§ 29-103.01 and 29-103.02(i);

(2) The street and mailing address of the principal office of the trust;

(3) The name and street and mailing address of the registered agent of the trust; and

(4) If the trust may have one or more series, a statement to that effect.

(c) A certificate of trust may contain any term in addition to those required by subsection (b) of this section but may not vary or otherwise affect the provisions specified in § 29-1201.04 in a manner that is inconsistent with that section.

(d) A statutory trust is formed when the certificate of trust becomes effective.

(e) A filed certificate of trust, a filed statement of cancellation or change, or articles filed under subchapter VII of this chapter or Chapter 2 of this title prevail over inconsistent terms of a trust instrument.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(3)(A), 59 DCR 13171.)

Effect of amendments. — “The 2013 amendment by D.C. Law 19-210 deleted “initial” preceding “registered” in (b)(3); added “but may not vary or otherwise affect the provisions specified in § 29-1201.04 in a manner that is inconsistent with that section” at the end of (c); rewrote (d); and substituted “articles filed under subchapter VII of this chapter or Chapter 2

of this title” for “filed articles of conversion or merger shall” in (e).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1202.02. Amendment or restatement of certificate of trust; statement of correction.

- (a) A certificate of trust may be amended or restated at any time.
- (b) To amend its certificate of trust, a statutory trust shall deliver to the Mayor for filing an amendment stating the:
 - (1) Name of the trust;
 - (2) Date of filing of its initial certificate; and
 - (3) Changes to the certificate as most recently amended or restated.
- (c) To restate its certificate of trust, a statutory trust must deliver to the Mayor for filing a restatement designated as such in its heading.
- (d) A trustee that knows or has reason to know that information in a filed certificate of trust was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances shall promptly:
 - (1) Cause the certificate to be amended; or
 - (2) If appropriate, deliver to the Mayor for filing a statement of change under § 29-104.07 or a statement of correction under § 29-102.05.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(3)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1202.04. Signing and filing pursuant to judicial order.

- (a) If a person required by this title to sign a record or deliver a record to the Mayor for filing under this title does not do so, any other person that is aggrieved may petition the Superior Court to order:
 - (1) The person to sign the record;
 - (2) The person to deliver the record to the Mayor for filing; or
 - (3) The Mayor to file the record unsigned.
- (b) If the petitioner under subsection (a) of this section is not the statutory trust to which the record pertains, the petitioner shall make the trust a party to the action.
- (c) A record filed pursuant to subsection (a)(3) of this section is effective without being signed.

(Mar. 5, 2013, D.C. Law 19-210, § 2(l)(3)(C), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes. — Application of Law 19-

210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1202.05. Liability for inaccurate information in filed record.

- (a) If a record delivered to the Mayor for filing under this title and filed by

the Mayor contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(1) A person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(2) Subject to subsection (b) of this section, a trustee of a statutory trust, if:

(A) The record was delivered for filing on behalf of the trust; and

(B) The trustee had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the trustee reasonably could have:

(i) Effected an amendment under § 29-1202.02;

(ii) Filed a petition under § 29-1202.04; or

(iii) Delivered to the Mayor for filing a statement of change under § 29-104.07 or a statement of correction under § 29-102.05.

(b) An individual who signs a record authorized or required to be filed under this title affirms under penalty of making false statements that the information stated in the record is accurate.

(Mar. 5, 2013, D.C. Law 19-210, § 2(l)(3)(C), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

Subchapter III. Governing Law; Authorization; Duration; Powers.

§ 29-1203.01. Governing law.

The law of the District shall govern the:

(1) Internal affairs of a statutory trust;

(2) Liability of a beneficial owner as beneficial owner, a trustee as trustee, and a person appointed, elected, or engaged under § 29-1201.03(e)(8) or (9) for a debt, obligation, or other liability of a statutory trust or a series thereof; and

(3) Enforceability of a debt, obligation, or other liability of the statutory trust or a series thereof against the property of the trust or any series thereof.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(4)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "a trustee as trustee, and a person appointed, elected, or engaged under § 29-1201.03(e)(8) or (9)" for "and a trustee as trustee" in (2).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1203.02. Statutory trust as entity.

A statutory trust is an entity separate from its trustees and beneficial owners.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(4)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “is” for “shall be.”

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1203.03. Permissible purposes.

(a) Except as otherwise provided in subsection (b) of this section, a statutory trust may be formed for and may have any lawful purpose, regardless of whether for profit.

(b) A statutory trust may not have a predominantly donative purpose.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(4)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added “regardless of whether for profit” at the end of (a); and substituted “may” for “shall” in (b).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1203.04. Limitation on liability of trustees and beneficial owners.

(a) A debt, obligation, or other liability of a statutory trust or series thereof shall be solely a debt, obligation, or other liability of the trust or series thereof. A beneficial owner, trustee, or person designated pursuant to § 29-1201.03(e)(8) or (9) is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the trust or series thereof solely by reason of being or acting as a trustee, beneficial owner, or person designated pursuant to § 29-1201.03(e)(8) or (9). This subsection applies regardless of the dissolution of the statutory trust.

(b) Except as otherwise provided in subchapter IV of this chapter, property of a statutory trust held in the name of the trust or by the trustee in the trustee’s capacity as trustee shall be subject to attachment and execution to satisfy a debt, obligation, or other liability of the trust.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(4)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted

“Limitation on liability of trustees and beneficial owners” for “Statutory trust solely liable for

debt, obligation, or other liability of statutory trust” in the section heading; rewrote (a); and substituted “shall be” for “shall be is” in (b).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1203.06. **Duration.**

(a) Except as otherwise provided in its certificate of trust, a statutory trust:

(1) Has perpetual duration; and

(2) May not be terminated or revoked except in accordance with this chapter or the terms of the trust’s certificate of trust.

(b) A series of a statutory trust may not be terminated or revoked except in accordance with this chapter or the terms of the governing instrument.

(c) The death, incapacity, dissolution, termination, or bankruptcy of a beneficial owner, trustee, or person designated under § 29-1201.03(e)(8) or (9) does not result in the termination or dissolution of a statutory trust or any series thereof.

(d) A statutory trust or any series thereof shall not terminate because the same person is the sole trustee and sole beneficial owner.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(4)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote (a); substituted “series of a statutory trust may” for “statutory trust, or any series thereof, shall” in (b); and substituted “trustee, or person designated under § 29-1201.03(e)(8) or (9) does” for “or trustee shall” in (c).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter IV. Series Trusts.

§ 29-1204.01. **Statutory trust having series.**

(a) The governing instrument may provide for the creation by the statutory trust of one or more series with respect to specified property of the statutory trust if:

(1) Records are maintained for the series which reasonably identify the property of the series, including by specific listing, category, type, quantity, or computational or allocational formula or procedure, such as a percentage or share of any property, or by any other method by which the identity of the property of the series is objectively determinable; and

(2) Notice that the trust may have one or more series is set forth in the certificate of trust as required by § 29-1202.01(b)(4).

(b) A series of a statutory trust shall not be an entity separate from the statutory trust.

(c) A series of a statutory trust may have a purpose, regardless of whether for profit, separate from the trust or any other series thereof if the purpose of the series is lawful and not a predominantly donative purpose.

(d) Subject to § 29-1204.03, the governing instrument may provide for the

creation of one or more classes of trustees, beneficial owners, or beneficial interests having separate rights, powers, or duties with respect to the statutory trust or any series thereof.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(5)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “purpose, regardless of whether for profit, separate” for “separate purpose” in (c); and added (d).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1204.02. Liability of series trust.

(a) In a series trust, a debt, obligation, or other liability incurred or otherwise existing respect to the:

(1) Property of a particular series shall be enforceable against the property of the series only, and not against the property of the trust generally or any other series thereof; and

(2) Trust generally or the property of any other series thereof shall not be enforceable against the property of the series.

(b) The association, disassociation, or reassociation of property of a statutory trust or a series thereof to or with the trust or a series thereof, including by a transaction under subchapter VII of this chapter or Chapter 2 of this title is deemed to be a transfer between separate persons under Chapter 31 of Title 28 and a distribution under § 29-1206.15.

(c) The rules pertaining to distributions under §§ 29-1206.15 and 29-1206.16 apply to a distribution from a series trust and from the property of any series thereof, except for a distribution under § 29-1204.04.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(5)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210, in (b), substituted “a transaction under subchapter VII of this chapter or Chapter 2 of this title is” for “conversion or merger under subchapter VII of this chapter shall be” and added “and a distribution under § 29-1206.15”; and added (c).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1204.05. Claims pertaining to a series.

(a) A series of a statutory trust may not sue or be sued in its own name.

(b) If a series trust has a claim against a person which pertains to the property of a series thereof, the trust may assert the claim under § 29-1203.08 and shall allocate the proceeds of the claim under §§ 29-1204.01 and 29-1204.02.

(c) If a person has a claim against a series trust which pertains to the property of a series thereof, to assert the claim the person must bring the claim

against the trust, stating that the claim pertains to the property of a series thereof and specifying the series if known. To the extent the claim succeeds and is reduced to judgment:

(1) The judgment must state that it is collectable only against the property of the specified series; and

(2) The judgment creditor may levy on the judgment only by serving the series trust, which shall satisfy the judgment by using only the property of the specified series.

(Mar. 5, 2013, D.C. Law 19-210, § 2(l)(5)(C), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

Subchapter V. Trustees and Trust Management.

§ 29-1205.01. Management of statutory trust.

The activities and affairs of a statutory trust shall be managed by or under the authority of its trustees.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(6)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities” for “business.”

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1205.02. Trustee powers.

A trustee may exercise:

(1) Powers conferred by the governing instrument;

(2) Except as limited by the governing instrument, any other powers necessary or convenient to carry out the activities and affairs of the statutory trust; and

(3) Other powers conferred by this chapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(6)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “activities” for “business” in (2).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1205.06. Reasonable reliance.

A trustee, officer, employee, manager, or committee of a statutory trust, or other person designated pursuant to § 29-1201.03(e)(8) or (9) is not liable to

the trust or to a beneficial owner for breach of any duty, including a fiduciary duty, to the extent the breach results from reasonable reliance on:

- (1) A term of the governing instrument;
- (2) A record of the statutory trust; or

(3) An opinion, report, or statement of another person that the trustee reasonably believes is within the other person's professional or expert competence and is made or delivered to the trustee, officer, employee, manager, or committee of a statutory trust or other person designated pursuant to § 29-1201.03(e)(8) or (9).

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(6)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Reasonable” for “Good-faith” in the section heading; in the introductory language substituted “§ 29-1201.03(e)(8) or (9) is not” for “§ 29-1201.03(e)(8), shall not be” and “reasonable” for “good-faith”; and added “or (9)” at the end of (3).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1205.07. Interested transactions.

(a) For the purposes of this section, the term “covered party” means a trustee, officer, employee, or manager of a statutory trust, or a related party of a trustee, officer, employee, manager, or other person designated pursuant to § 29-1201.03(e)(8) or (9).

(b) Subject to subsection (c) of this section, a covered party may lend money to, borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume an obligation of, provide collateral for, or do other business with the statutory trust and, subject to law other than this title, has the same rights and obligations with respect to those matters as a person that is not a covered party.

(c) A transaction described in subsection (b) of this section shall be voidable by the statutory trust unless the covered party shows that the transaction is fair to the trust.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(6)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added “or (9)” at the end of (a).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1205.09. Reimbursement, indemnification, advancement, and exoneration.

(a) A statutory trust shall reimburse a trustee for any payment made by the trustee in the course of the trustee's activities on behalf of the statutory trust,

if the trustee complied with §§ 29-1205.05 and 29-1206.15 in making the payment.

(b) A statutory trust may indemnify and hold harmless a trustee, beneficial owner, or person designated pursuant to § 29-1201.03(e)(8) or (9) with respect to any claim or demand against the person by reason of the person's relationship with the trust if the claim or demand does not arise from the person's bad faith, willful misconduct, or reckless indifference.

(c) Expenses, including reasonable attorneys' fees and costs, incurred by a trustee, beneficial owner, or person designated pursuant to § 29-1201.03(e)(8) or (9) in connection with a claim or demand against the person by reason of the person's relationship to a statutory trust may be paid by the trust before the final disposition of the claim or demand, upon an undertaking by or on behalf of the person to repay the trust if the person is ultimately determined not to be entitled to be indemnified under subsection (b) of this section.

(d) A term in the governing instrument relieving or exonerating a trustee or person designated pursuant to § 29-1201.03(e)(8) or (9) from liability is unenforceable to the extent it relieves or exonerates the trustee from liability for conduct involving bad faith, willful misconduct, or reckless indifference.

(e) A statutory trust may purchase and maintain insurance on behalf of a trustee, person designated under § 29-1201.03(e)(8) or (9), or beneficial owner of the trust, against any liability asserted against or incurred by the trustee, person, or beneficial owner in that capacity, or arising from that status. The purchase and maintenance of insurance may occur even if, under § 29-1201.04(9), the trust instrument cannot limit or eliminate a person's liability to the trust for the conduct giving rise to the liability.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(6)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section and the section heading.

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Subchapter VI. Beneficial Owners.

§ 29-1206.01. Beneficial interest.

(a) A beneficial interest in a statutory trust is personal property.

(b) A beneficial interest in a statutory trust shall not be an interest in specific property of the statutory trust.

(c) A beneficial owner shall not have a preemptive right to subscribe to any additional issue of beneficial interests or any other interest of a statutory trust.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(7)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 repealed former (a); redesignated former "(b) through (d)" as (a) through (c); and substituted "is personal

property” for ““shall be personal property regardless of the nature of the property of the trust” in (a).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor’s notes.

Section 2(l)(7)(A) of D.C. Law 19-210 substi-

tuted “Beneficial Owners” for “Beneficiaries and Beneficial Rights” in the subchapter heading.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1206.03. Contribution by beneficial owner.

(a) A contribution of a beneficial owner to a statutory trust may consist of property transferred, services performed, or another benefit provided to the statutory trust, or an agreement to transfer property, perform services, or provide another benefit. A person may become a beneficial owner of a statutory trust and may receive a beneficial interest in a statutory trust without making a contribution or being obligated to make a contribution to the trust.

(b) A person’s obligation to contribute money or other property or other benefit to, or to perform services for, a statutory trust is not excused by the person’s death, disability, or other inability to perform the person’s obligations personally. If a person does not fulfill an obligation to make a contribution, other than a monetary contribution, the person is obligated at the option of the trustee to contribute money equal to the value of the part of the contribution which has not been made.

(c) The governing instrument may provide that a beneficial owner that fails to make a required contribution, or comply with the terms and conditions of the governing instrument, shall be subject to specified penalties for or consequences of the failure, including:

(1) Reduction or elimination of the defaulting beneficial owner’s proportionate interest in the statutory trust or series thereof;

(2) Subordination of the defaulting beneficial owner’s beneficial interest to that of nondefaulting beneficial owners;

(3) Forced sale or forfeiture of the defaulting beneficial owner’s beneficial interest;

(4) Imposition of an obligation to repay a loan to the statutory trust by another beneficial owner of the amount necessary to meet the defaulting beneficial owner’s commitment;

(5) Redemption or sale of the defaulting beneficial owner’s beneficial interest at a value fixed by appraisal or by formula; and

(6) Specific performance of an obligation under the governing instrument.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(7)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “consist of property transferred, services performed, or another benefit provided to the stat-

utory trust, or an agreement to transfer property, perform services, or provide another benefit” for “be in cash, property, or services rendered or a promissory note or other obligation

to contribute cash or property or to perform services” in the first sentence of (a); and rewrote (b).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1206.04. Distribution to beneficial owner.

(a) When a beneficial owner becomes entitled to receive a distribution, with respect to the distribution, the beneficial owner shall have the status of, and shall be entitled to all remedies available to, a creditor of the statutory trust.

(b) A beneficial owner has a right to a distribution before the dissolution and winding up of a statutory trust only if the trustee decides to make an interim distribution. A beneficial owner shall not have a right to demand or to receive a distribution from the trust in any form other than money.

(c) Except as otherwise provided in § 29-1208.03(b), the trust may distribute an asset in kind if each part of the asset is fungible with each other part and each beneficial owner receives a percentage of the asset equal in value to the beneficial owner’s share of the distribution.

(d) Any distributions made by a statutory trust before its dissolution and winding up must be in proportion to the beneficial interests.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(7)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 added the first sentence in (b); added “Except as otherwise provided in § 29-1208.03(b)” in (c); and added (d).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1206.06. Transfer of beneficial interest.

(a) For the purposes of this section, “covered creditor” means a judgment creditor of a beneficial owner or a person to which a beneficial interest has been transferred by operation of law.

(b) Except as otherwise provided in the governing instrument, a beneficial interest in a statutory trust is freely transferable.

(c) The governing instrument may not limit the transferability of a beneficial interest if the same person is the sole trustee and sole beneficial owner.

(d) If a beneficial interest is not freely transferable by a beneficial owner such that a transferee may become a beneficial owner without further requirement except notice to the statutory trust, the following rules apply:

(1) On petition by a covered creditor, the Superior Court may authorize the petitioner to reach the beneficial owner’s interest by attachment of present or future distributions to or for the benefit of the beneficial owner or by other means. The court may limit the award to relief that is appropriate under the circumstances.

(2) On petition by a covered creditor, to the extent a trustee has not complied with a standard of distribution provided in the governing instrument

or has abused the trustee's discretion to make a distribution, the Superior Court:

(A) May order a distribution to the benefit of the petitioner; and

(B) If a distribution is ordered, shall direct the trustee to pay to the petitioner an equitable amount but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficial owner if the trustee had complied with the standard or had not abused the discretion.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(7)(E), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1206.09. Direct action by beneficial owner.

A beneficial owner may maintain a direct action against a statutory trust to redress an injury sustained by, or to enforce a duty owed to, the beneficial owner only if the owner can plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the statutory trust.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(7)(F), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 rewrote the section.

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1206.10. Derivative action by beneficial owner.

A beneficial owner may maintain a derivative action to enforce a right of a statutory trust if:

(1) The beneficial owner first makes a demand on the trustees, requesting that the trustees cause the trust to bring an action to redress the injury or enforce the right, and the trustees do not bring the action within a reasonable time; or

(2) A demand would be futile.

(Mar. 5, 2013, D.C. Law 19-210, § 2(l)(7)(G), 59 DCR 13171.)

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes. — Application of Law 19-

210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1206.11. Proper plaintiff.

A derivative action to enforce a right of a statutory trust may be maintained only by a person that is a beneficial owner at the time the action is commenced and:

- (1) Was a beneficial owner when the conduct giving rise to the action occurred; or
- (2) Whose status as a beneficial owner devolved upon the person by operation of law or pursuant to the terms of the governing instrument from a person that was a beneficial owner at the time of the conduct.

(Mar. 5, 2013, D.C. Law 19-210, § 2(l)(7)(G), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-1201.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-1206.12. Pleading.

In a derivative action to enforce a right of a statutory trust, the complaint shall state with particularity the:

- (1) Date and content of the plaintiff's demand and the trustees' response to the demand; or
- (2) Reason the demand should be excused as futile.

(Mar. 5, 2013, D.C. Law 19-210, § 2(l)(7)(G), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-1201.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-1206.13. Proceeds and expenses.

(a) Except as otherwise provided in subsection (b) of this section:

- (1) Any proceeds or other benefits of a derivative action on behalf of a statutory trust, whether by judgment, compromise, or settlement belong to the trust and not to the plaintiff; and
- (2) If the plaintiff receives any proceeds, the plaintiff shall immediately remit them to the trust.

(b) If a derivative action on behalf of a statutory trust is successful in whole or in part, the court may award the plaintiff reasonable attorneys' fees, costs, and other expenses from the recovery by the trust.

(c) A derivative action on behalf of a statutory trust shall not be voluntarily dismissed or settled without the court's approval.

(Mar. 5, 2013, D.C. Law 19-210, § 2(l)(7)(G), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-1201.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-1206.14. Special litigation committee.

(a) If a statutory trust is named as or made a party in a derivative proceeding, the trust may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the trust. If the trust appoints a special litigation committee, on motion by the committee made in the name of the trust, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to complete its investigation. This subsection does not prevent the court from enforcing a person's right to information under § 29-1205.08 or § 29-1206.08, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee may be composed of one or more disinterested and independent individuals, who may be trustees.

(c) A special litigation committee may be appointed:

(1) By a majority of the trustees not named as defendants or plaintiffs in the proceeding; and

(2) If all trustees are named as defendants or plaintiffs in the proceeding, by a majority of the trustees named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the statutory trust that the proceeding:

(1) Continue under the control of the plaintiff;

(2) Continue under the control of the committee;

(3) Be settled on terms approved by the committee; or

(4) Be dismissed.

(e) After making a determination under subsection (d) of this section, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) of this section and allow the action to proceed under the direction of the plaintiff.

(Mar. 5, 2013, D.C. Law 19-210, § 2(l)(7)(H), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that note to § 29-1201.02. the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-1206.15. Limitations on distributions.

(a) A statutory trust may not make a distribution, including a distribution under § 29-1208.03(b)(2), if after the distribution:

(1) The trust would not be able to pay its debts as they become due in the ordinary course of the trust's activities and affairs; or

(2) The trust's total assets would be less than the sum of its total liabilities plus, unless the governing instrument permits otherwise, the amount that would be needed, if the trust were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of beneficial owners and transferees whose preferential rights are superior to the right to receive distributions of the persons receiving the distribution.

(b) A trustee may base a determination that a distribution is not prohibited under subsection (a) of this section on:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) A fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (e) of this section, the effect of a distribution under subsection (a) of this section is measured:

(1) In the case of a distribution by purchase, redemption, or other acquisition of a beneficial interest, as of the earlier of the date:

(A) Money or other property is transferred or debt is incurred by the trust; or

(B) The person entitled to the distribution ceases to own the interest or rights being acquired by the trust in return for the distribution;

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of the date:

(A) The distribution is authorized, if the payment occurs not later than 120 days after that date; or

(B) The payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(d) A statutory trust's indebtedness to a beneficial owner or transferee incurred by reason of a distribution made in accordance with this section is at parity with the trust's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(e) A statutory trust's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of subsection (a) of this section if the terms of the indebtedness provide that payment of principal and interest are made only if and to the extent that payment of a distribution could then be made under this section. If indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(f) In measuring the effect of a distribution under § 29-1208.03(b)(2), the debts, obligations, and other liabilities of a dissolved statutory trust do not

include any claim that has been disposed of under § 29-1208.04, 29-1208.05, or 29-1208.06.

(Mar. 5, 2013, D.C. Law 19-210, § 2(l)(7)(H), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

§ 29-1206.16. Liability for improper distributions.

(a) If a trustee of a statutory trust consents to a distribution made in violation of § 29-1206.15 and in consenting to the distribution fails to comply with § 29-1205.05, the trustee is personally liable to the trust or the series thereof for the amount of the distribution which exceeds the amount that could have been distributed in accordance with § 29-1206.15.

(b) A person that receives a distribution knowing that the distribution was made in violation of § 29-1206.15 is personally liable to the statutory trust or series thereof, but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under § 29-1206.15.

(c) A person against which an action is commenced because the person is liable under subsection (a) or (b) of this section may implead:

(1) Any other person that is liable under subsection (a) of this section and seek to enforce a right of contribution from that person; and

(2) Any person that received a distribution in violation of subsection (c) of this section and seek to enforce a right of contribution from that person in the amount the person received in violation of subsection (c) of this section.

(d) An action under this section is barred if not commenced not later than 2 years after the distribution.

(Mar. 5, 2013, D.C. Law 19-210, § 2(l)(7)(H), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

Subchapter VIII. Dissolution and Winding Up.

§ 29-1208.01. Events causing dissolution.

A statutory trust shall be dissolved only by:

(1) An administrative dissolution under §§ 29-106.01 and 29-106.02; or

(2) The filing of articles of dissolution under § 29-1208.02:

(A) As provided in the certificate of trust; or

(B) With the approval of all the beneficial owners.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(8)(A), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “As provided in the certificate of trust” for “On the occurrence of an event or circumstance that the governing instrument states causes dissolution” in (2)(A).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1208.03. **Winding up.**

(a) A dissolved statutory trust shall wind up its activities and the trust and each series thereof shall continue after dissolution only for the purpose of its winding up.

(b) In winding up its activities, a statutory trust shall:

(1) Discharge the trust’s debts, obligations, and other liabilities, settle and close the trust’s activities, and marshal and distribute the property of the trust; and

(2) Distribute any surplus property after complying with paragraph (1) of this subsection to the beneficial owners in proportion to their beneficial interests.

(c) In winding up its activities, a statutory trust may:

(1) Preserve the trust’s activities and property as a going concern for a reasonable time;

(2) Institute, maintain, and defend actions and proceedings, whether civil, criminal, or administrative;

(3) Transfer the trust’s property;

(4) Settle disputes; and

(5) Perform other acts necessary or appropriate to its winding up.

(d) Trustees of a dissolved statutory trust that has disposed of claims under § 29-1208.04 or § 29-1208.05 shall not be liable for breach of duty with respect to claims against the trust that are barred or satisfied under § 29-1208.04 or § 29-1208.05.

(e) The dissolution of a statutory trust shall not terminate the authority of its registered agent.

(f) On application of any person that shows good cause, the Superior Court may appoint a person to be a receiver for a dissolved statutory trust with the power to undertake any action that might have been done by the trust during its winding up if the action is necessary for final settlement of the trust.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(1)(8)(B), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “subsection” for “section” in (b)(2).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1208.04. **Known claims against dissolved statutory trust.**

(a) Except as otherwise provided in subsection (c) of this section, a dissolved

statutory trust may give notice of a known claim which has the effect provided in subsection (b) of this section. The trust may, in a record, notify its known claimants of the dissolution. The notice shall:

- (1) Specify the information required to be included in the claim;
 - (2) Provide a mailing address to which the claim is to be sent;
 - (3) State the deadline for receipt of the claim, which shall not be less than 120 days after the date the notice is sent to the claimant; and
 - (4) State that the claim will be barred if not received by the deadline.
- (b) A claim against a dissolved statutory trust is barred if the requirements of subsection (a) of this section are met and:

- (1) The claim is not received by the specified deadline; or
 - (2) If the claim is timely received but rejected by the trust:
- (A) The trust notifies the claimant in a record that the claim is rejected and will be barred unless the claimant commences an action against the trust to enforce the claim not later than the 90th day after the claimant receives the notice; and

(B) The claimant does not commence the required action not later than the 90th day.

(c) This section shall not apply to a claim based on:

- (1) An event occurring after the effective date of dissolution; or
- (2) A liability that on that date is contingent.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(8)(C), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted “Known claims against dissolved statutory trust” for “Notice to claimant” in the section heading; substituted “give notice of a known claim which has the effect provided in subsection (b) of this section. The trust may, in a record, notify its known claimants of the dissolution” for “dispose of a known claim against it

by sending notice to the claimant in a record of the dissolution of the trust” in (a); and deleted “unmatured or” preceding “contingent” in (c)(2).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor’s notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1208.05. Other claims against dissolved statutory trust.

(a) A dissolved statutory trust may publish notice of its dissolution and request persons having claims against the trust to present them in accordance with the notice.

(b) A notice under subsection (a) of this section shall:

- (1) Be published at least once in a newspaper of general circulation in the District or, if it has no principal office in the District, in the city in which the trust’s principal office is or was last located;
- (2) Describe the information required for a claim;
- (3) Provide a mailing address to which the claim may be sent; and
- (4) State that a claim against the trust shall be barred unless an action to enforce the claim is commenced not later than 3 years after publication of the notice.

(c) If a dissolved statutory trust publishes a notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences an action to enforce a claim against the trust not later than 3 years after the publication date of the notice:

(1) A claimant that did not receive notice in a record under § 29-1208.04;

(2) A claimant whose claim was timely sent to the trust but was rejected or not acted on; and

(3) A claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(d) A claim not barred under this section or § 29-1208.04 may be enforced against:

(1) A dissolved statutory trust, to the extent of its undistributed property; and

(2) A beneficial owner, except as provided in § 29-1208.06, if property of the trust has been distributed after dissolution, against a beneficial owner to the extent of that person's proportionate share of the claim or property distributed to the beneficial owner after dissolution, whichever is less.

(e) A person's total liability for all claims under subsection (d)(2) of this section does not exceed the total amount of assets distributed to the person after dissolution.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; Mar. 5, 2013, D.C. Law 19-210, § 2(l)(8)(D), 59 DCR 13171.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-210 substituted "Other claims against dissolved statutory trust" for "Publication of notice" in the section heading; in (c), substituted "the claim of each of the following claimants is barred unless" for "unless", and deleted "the claim of each of the following claimants shall be barred" following "date of the notice"; and rewrote (d) and (e).

Legislative history of Law 19-210. — See note to § 29-1201.02.

Editor's notes.

Application of Law 19-210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

§ 29-1208.06. Court proceedings.

(a) A dissolved statutory trust that has published a notice under § 29-1208.05 may file an application with the Superior Court, or, if the principal office is not located in the District, in the appropriate court where the office of its principal office is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved trust or that are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved trust, are reasonably expected to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under § 29-1208.05(c).

(b) Notice of the proceeding must be given by the dissolved statutory trust to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved trust not later than 10 days after the filing of the application under subsection (a) of this section.

(c) The Superior Court may appoint a guardian ad litem to represent all

claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including reasonable expert witness fees, must be paid by the dissolved statutory trust.

(d) Provision by the dissolved statutory trust for security in the amount and the form ordered by the court under subsection (a) of this section satisfies the dissolved trust's obligations with respect to claims that are contingent, have not been made known to the dissolved trust, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a beneficial owner that received assets in liquidation.

(Mar. 5, 2013, D.C. Law 19-210, § 2(l)(8)(E), 59 DCR 13171.)

Legislative history of Law 19-210. — See 210: Section 7 of D.C. Law 19-210 provided that the act shall apply as of January 1, 2012.

Editor's notes. — Application of Law 19-

TITLE 31. INSURANCE AND SECURITIES.

SUBTITLE II. REGULATION OF INSURANCE INDUSTRY GENERALLY.

Chapter

3. Annual Audited Financial Reports.

6A. Fingerprint-Based Background Checks.

SUBTITLE II. REGULATION OF INSURANCE INDUSTRY GENERALLY.

CHAPTER 3. ANNUAL AUDITED FINANCIAL REPORTS.

Sec.

31-305. Qualifications of independent certified public accountant.

§ 31-305. Qualifications of independent certified public accountant.

(a) The Mayor shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

(1)(A) Is not in good standing with the American Institute of Certified Public Accountants in all jurisdictions in which the accountant is licensed to practice; or

(B) For a Canadian or British company, is not a chartered accountant; or

(2) Has either directly or indirectly entered into an agreement of indemnity or release from liability with respect to the audit of the insurer.

(b) Except as otherwise provided herein, an independent certified public accountant shall be recognized as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants, Chapter 15 [repealed] of Title 3, and rules promulgated by the District of Columbia Board of Accountancy.

(b-1) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration; provided, that in the event of a delinquency proceeding commenced against the insurer under Chapter 13 of this title [§ 31-1301 et seq.], the mediation or arbitration provision shall operate at the option of the statutory successor.

(c)(1) The lead or coordinating audit partner having primary responsibility for the audit shall not act in that capacity for more than 5 consecutive years. A lead or coordinating auditor shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of 5 consecutive years. An insurer may make application

to the Mayor for relief from the above rotation requirement on the basis of unusual circumstances. Any application shall be made at least 30 days before the end of the calendar year. The Mayor may consider the following factors in determining if the relief should be granted:

(A) The number of partners, the expertise of the partners, or the number of insurance clients in the currently registered firm;

(B) The premium volume of the insurer; or

(C) The number of jurisdictions in which the insurer transacts business.

(2) The insurer shall file, with its annual statement filing, the approval for relief from subsection (c)(1) of this section with the jurisdictions in which it holds a license or does business and the NAIC. If a nondomestic jurisdiction accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(d) The Mayor shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report prepared, in whole or in part, by any natural person who:

(1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, approved October 15, 1970 (84 Stat. 941; 18 U.S.C. § 1961 et seq.), or any dishonest conduct or practices under federal or state law;

(2) Has been found to have violated the insurance laws of the District of Columbia with respect to any previous reports submitted under this chapter; or

(3) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this chapter.

(e) The Mayor, as provided in §§ 31-2502.03 and 31-4305, may hold a hearing to determine whether an independent public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this chapter and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this chapter.

(f)(1) The Mayor shall not recognize as a qualified independent certified public accountant, or accept an annual audited financial report, prepared in whole or in part by a independent certified public accountant, who provides to an insurer, contemporaneously with the audit, the following non-audit services:

(A) Bookkeeping or other services related to the accounting records or financial statements of the insurer;

(B) Financial information systems design and implementation;

(C) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(D)(i) Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements.

(ii) The accountant may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts

recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification of an insurer's reserves if the following conditions have been met:

(I) The accountant or the accountant's actuary has not performed any management functions or made any management decisions;

(II) The insurer has competent personnel or engages a third-party actuary to estimate the reserves for which management takes responsibility; and

(III) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

(E) Internal audit outsourcing services;

(F) Management functions or human resources;

(G) Broker or dealer, investment adviser, or investment banking services;

(H) Legal services or expert services unrelated to the audit; or

(I) Any other services that the Mayor determines, by rule, are impermissible.

(2) The principles of independence with respect to services provided by the qualified independent certified public accountant are predicated on 3 basic principles: the accountant cannot function in the role of management; the accountant cannot audit its own work; and the accountant cannot serve in an advocacy role for the insurer. A violation of one or more of these principles shall impair the accountant's independence.

(g) An insurer having direct written and assumed premiums of less than \$100 million in any calendar year may request an exemption from subsection (f)(1) of this section. The insurer shall file with the Mayor a written statement explaining why the insurer should be exempt. If the Mayor finds, upon review of the statement, that compliance with subsection (f)(1) of this section would constitute a financial or organizational hardship on the insurer, an exemption may be granted.

(h) A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in or do not conflict with subsection (f) of this section, if the audit committee provides advance approval in accordance with subsection (i) of this section.

(i) All auditing services and non-audit services provided to an insurer by a qualified independent certified public accountant shall be preapproved by the audit committee. The preapproval requirement shall be waived with respect to non-audit services if:

(1) The insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity; or

(2)(A) The aggregate amount of all such non-audit services provided to the insurer constitutes no more than 5% of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;

(B) The services were not recognized by the insurer at the time of the engagement to be non-audit services; and

(C) The provision of services is promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(j) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapproval required by subsection (i) of this section. Any decision by a member or members to whom authority has been delegated to preapprove certain audit and non-audit services shall be formally presented to the full audit committee at its next regularly scheduled meeting.

(k)(1) The Mayor shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer was employed by the independent certified public accountant and participated in the audit of the insurer during the one-year period preceding the date the most current statutory opinion is due. This paragraph shall apply only to partners and senior managers involved in the audit. An insurer may make application to the Mayor for relief from the requirement of this paragraph on the basis of good cause.

(2) The insurer shall file, with its annual statement filing, any approval for relief obtained pursuant to paragraph (1) of this subsection with the jurisdictions in which it holds a license or does business and with the NAIC. If a nondomestic jurisdiction accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(Oct. 21, 1993, D.C. Law 10-48, § 6, 40 DCR 6102; Feb. 27, 1996, D.C. Law 11-90, §§ 5(b), 5(c), 42 DCR 7155; Mar. 12, 2011, D.C. Law 18-317, § 2(e), 57 DCR 12418; Sept. 26, 2012, D.C. Law 19-171, § 84, 59 DCR 6190.)

Section references. — This section is referenced in § 31-310 and § 31-312.

Effect of amendments.

The 2012 amendment by D.C. Law 19-171 deleted “that” preceding “is not” in (a)(1)(B).

Legislative history of Law 19-171. — Law 19-171, the “Technical Amendments Act of 2012,” was introduced in Council and assigned

Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

CHAPTER 6A. FINGERPRINT-BASED BACKGROUND CHECKS.

Sec.

31-631. Definitions.

31-632. Fingerprinting and criminal history record background checks.

Sec.

31-633. Confidentiality.

31-634. Rules.

§ 31-631. Definitions.

For the purposes of this chapter, the term:

(1) “Applicant” means an individual, or other person designated by the Commissioner by rule, applying for any of the following:

(A) An initial license as a resident insurance producer pursuant to Chapter 11A of this title [§ 31-1131.01 et seq.], or public insurance adjuster pursuant to Chapter 16A of this title [§ 31-1631.01 et seq.];

(B) A license or registration to be an agent, broker-dealer, investment adviser, or investment adviser representative pursuant to Chapter 56 of this title [§ 31-5601.01 et seq.];

(C) A charter to open and operate a new bank pursuant to Chapter 7 of this title 26 [§ 26-701 et seq.]; or

(D) A license, charter, or registration, other than those designated in subparagraphs (A) through (C) of this paragraph, as designated by the Commissioner by rule.

(2) “Commissioner” means the Commissioner of the Department of Insurance, Securities, and Banking.

(3) “Fingerprint” means an impression of the lines on the finger taken for the purpose of identification. The impression may be electronic or in ink converted to an electronic format.

(June 20, 2012, D.C. Law 19-143, § 101, 59 DCR 4069.)

Legislative history of Law 19-143. — Law 19-143, the “DISB Fingerprint-Based Background Check Authorization Act of 2012”, was introduced in Council and assigned Bill No. 19-198, which was referred to the Committee on Public Services and Consumer Affairs. The

Bill was adopted on first and second readings on March 6, 2012, and April 17, 2012, respectively. Signed by the Mayor on April 29, 2012, it was assigned Act No. 19-346 and transmitted to both Houses of Congress for its review. D.C. Law 19-143 became effective on June 20, 2012.

§ 31-632. Fingerprinting and criminal history record background checks.

(a) The Commissioner shall require state and national criminal history record background checks of each applicant for the purpose of determining eligibility for a license, registration, or charter. In order for the Commissioner to obtain and receive national criminal history records from the Federal Bureau of Investigation’s Criminal Justice Information Services Division, the Commissioner shall require each applicant to submit a full set of fingerprints, including a scanned electronic or digital fingerprint or a hard copy fingerprint.

(b) The applicant shall bear the cost of administering and processing the fingerprinting and criminal history record background checks. The Commissioner shall establish, by rule, fees to cover the costs associated with the fingerprinting and criminal history record background checks.

(c) The Commissioner may contract for the collection and transmission of fingerprints authorized under this chapter, including any administrative functions related thereto.

(d) The Commissioner may exchange the fingerprints and other information with, and receive criminal history record background information from, the

Metropolitan Police Department and the Federal Bureau of Investigation for the purpose of facilitating determinations regarding eligibility for licensure under this chapter. The Metropolitan Police Department may exchange this fingerprint data with the Federal Bureau of Investigation.

(June 20, 2012, D.C. Law 19-143, § 102, 59 DCR 4069.)

Legislative history of Law 19-143. — For history of Law 19-143, see notes under § 31-631.

§ 31-633. Confidentiality.

(a) The Commissioner shall:

(1) Treat and maintain applicants' fingerprints and any criminal history record background information obtained under this chapter as confidential;

(2) Apply security measures consistent with the Criminal Justice Information Services Division of the Federal Bureau of Investigation's standards for the electronic storage of fingerprints and necessary identifying information; and

(3) Limit the use of records solely for the purposes authorized by this chapter.

(b) For the purposes of this chapter, any such records shall:

(1) Not be deemed to be a public record within the meaning of § 2-502(18);

(2) Not be subject to disclosure, except pursuant to a subpoena issued by order of a court of competent jurisdiction;

(3) Be kept confidential by law and privileged; and

(4) Not be subject to discovery or admissible in any private civil action.

(June 20, 2012, D.C. Law 19-143, § 103, 59 DCR 4069.)

Legislative history of Law 19-143. — For history of Law 19-143, see notes under § 31-631.

§ 31-634. Rules.

The Commissioner, pursuant to Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this chapter.

(June 20, 2012, D.C. Law 19-143, § 104, 59 DCR 4069.)

Legislative history of Law 19-143. — For history of Law 19-143, see notes under § 31-631.

